

ELEMENTS OF CIVICS

Polis Sci

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PREFACE

The necessity of the study of this science never needed an emphasis as it does to-day and much more so when we are governed by our own people and governed thus. The much loved and loudly talked of democracy survives, if at all it does, in books like this. What should have been a name for reality is merely a name for some forlorn fantasy. So it is a mistake to call this book "Elements of Civics" instead of calling it "Civics, a fantasy." If we want to make it a reality, our everyday life should adopt such codes of behaviour and such ways of life that if they are to be summed up in a word, that word should be none other than "Democracy". The future citizens of a free India need necessarily be democratic and we hope that books like this may be its essential intellectual background.

We are indebted to many an authority on the subject. We have freely quoted from their works but we do not think it inevitable to mention their name in the usual footnotes which always prove a burden to the students.

Authors.



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ELEMENTS OF CIVICS

CHAPTER I

INTRODUCTORY

1. Meaning, Definition and Scope of Civics

The word Civics is derived from the Latin words (1) *Civitas*, which means a city and (2) *Civis*, which means a citizen.

Meaning of Civics

Etymologically, therefore, Civics can be described as the study of man as a citizen of a State. (Naturally within the orbit of civics would be included the study of the citizen and

the State, the relations between the two and the other problems connected with each of them.) But the question arises whether

Narrower Definition

the activities of man exhaust by simply being a citizen of a political organisation like the State. No doubt the State is the most powerful and universal of all social institu-

tions, and in the past as well as in the present we find organisation and authority in the abstract person of the State. It provides as if a social framework regulated by its laws. Whatever power the political organisation may wield upon the life of man, whatever guarantees it may provide for the protection of his life and extend rights and liberties which he enjoys, whatever the extent of respect and honour with which the individual citizen look towards the supremacy of State, the life of the citizen covers a wider range. Besides the political value, in the life of an individual there is also the prominence of certain other values—cultural, economical, philosophical and ethical. Instead of defining civics in this narrower sense, attempt is

Civics in wider sense of the term

made to define civics as a study of man in all his aspects, as a study of his past, present and future. However, this is too wide a definition to be of any practical use as it makes the subject so wide in its scope as to be co-

extensive with humanity itself. "If the former definition errs on the side of narrowness, the latter errs on the side of unimaginable width."

It is necessary to avoid both these extremes and define civics in such a manner as would accord to actual facts, because civics is neither the study of man as a citizen only nor is it the study of man in all his aspects. In our day-to-day life we find each citizen not only paying his due regard and obedience to the authority of the State, but also engaged in other multifarious activities. The great majority of people are engaged in actions executed with the co-operation of others and in the every-day situations where men co-operate to teach children, worship God, view the artistic achievements of the past, in factories which supply their material needs, manufacture the radio and the movie bringing before them the thoughts and deeds of men all over the world, such and thousand others—we could see the extent and variety of social organisation which man has brought into being to make human life more efficient and pleasant. Naturally, within the State by participating in various local and municipal organisations, and outside the State by thinking in terms of internationalism as the scientific discoveries have practically annihilated time and distance and no State, however strong it may be, can for long remain in isolation, the citizens are playing a different and distinct role. At one and the same time, the citizen becomes a member of the State, of various social organisations and institutions within the territorial boundaries of the State and of many other international organisations that crop up with the eventualities of time outside the State. It is, therefore, not possible with this background to preserve the old and orthodox definition of civics. Civics studies State, local organisations within the State, international organisations outside the State, and the rights and duties of the citizens with reference to them. Civics, therefore, could be defined as that branch of knowledge which studies man as a citizen of State primarily, and as a member of other two forms of organisations—local and international, secondarily.

Scope of Civics

2. Civics as an Art and as a Science

The field of human knowledge is so vast that for the purpose of study and investigation, a part of that knowledge is reduced to a system and is designated as science. But with the advance of time the data at our disposal have gone to such magnitude that it has been found necessary to divide and sub-divide the science and we have many sciences, for instance, Physical, Biological and Social. Civics pertains to that branch of knowledge which we call social sciences.

Division of human knowledge into systems called sciences

The sciences dealing with man are called social sciences because man is born in society, he lives in society and he is destined to be so in future also. It can be said that it is due to the nature of conclusions of various sciences that classification of sciences has been deemed necessary. In the case of physical sciences as they deal with facts and essentially rest upon observation and experiment, the conclusions are exact and precise. There is always a chance of repetition. Naturally the laws of physical sciences have universal applicability. In the case of biological sciences, observation is possible but not experiment to the extent to which it is possible in case of physical sciences. Naturally their conclusions have not the same preciseness and exactitude as the conclusions of physical sciences. They have a partial applicability and there is every chance that they may be questioned. In the case of social sciences any possibility of experiment to the extent to which it is there in biological sciences is ruled out because they have to treat with a phase of life which is extremely complex, dynamic and varied. Naturally the conclusions are far from being exact and true. So by using observational method to the greatest possible extent and by assimilating facts, by selecting and omitting some of them they try to become as systematic as possible.

Social sciences

Still the question is asked whether civics is a science or an art essentially because of the subject matter of civics, the method it follows and nature of its conclusions. The answer to such a question is that it is both a science and an art and neither the one nor the other exclusively.

Civics is both a science and an art

An art is one which lays down what the human beings should observe in their daily conduct and what they should necessarily avoid. Community life becomes harmonious only if certain objectives are attained. It is the business of Art to describe the practical aim and the ways and means, the adoption of which would enable the society to reach that goal. Naturally, art deals with ideals of human conduct. The subject matter of civics has for its aim the greatest good of the greatest number, the welfare of the citizens and to some extent welfare of the entire humanity. Keeping these noble ideals in view it formulates the ideal of a good State and lays down that such and such rights should be conferred upon the citizens and so many duties should be exacted from them in order that there should not only be the all-round development and enrichment of the personality of individual citizens but advancement and betterment on progressive lines of community life as well. It is in this sense that civics is an art.

If an art deals with ideals, science deals with facts and figures. Being based upon observation and experiment, the conclusions of scientific data are exact, their anticipations to the mark, and their predictions true. In this sense civics cannot be described as a science because its conclusions have not the same preciseness, exactitude and practical value as those of physical or biological sciences to some extent. But if science is described as a mass of knowledge concerning a particular subject acquired by systematic observation, experience and study and analysed and classified into a unified whole, then civics has every cause to be regarded as a science. Civics deals with man and man is constantly changing. But in spite of the diversities in the constantly changing human thoughts, feelings and actions there is a constancy and uniformity in the tendencies of human nature which enables us to regard the act of man at one time as due to the same causes which have governed his acts at previous times. Moreover as the subject-matter of civics conducts its studies and arrives at various conclusions in accordance with a definite plan or system, with due regard to the relations of cause and effect and in conformity with some well-organised rules of scientific inves-

tigation its description as a science is fully justified even though it remains inexact in its nature.

Civics being a social science, when we want to investigate in the phenomena of society we cannot follow the same method adopted by other sciences in the real sense of the term. We cannot reproduce at will the facts under investigation nor do the phenomena react at regular intervals. The material at our disposal is influenced by unpredictable actions of individuals and groups. Naturally, therefore, experimental method is of no use and scope for deductive method is very limited as there is every chance of deductions of conclusions having no basis in facts.

Methods of study of Civics

The best method for our study is inductive, practical and historical. We have to depend primarily upon observation as all possibilities of experiment are ruled out. The inductive method makes inductive generalization from the study of historical facts. It tries to explain what the social and political institutions are and are tending to be in the knowledge of what they have been and of the way in which they have developed. We then try to apply our generalisation to existing state of circumstances and see whether our conclusions hold good in the case of subsequent events. It is, however, advantageous to supplement this method by comparative method which attempt to discover general laws and conclusions from the study of the past or the existing state by a process of selection, comparison and elimination.

3. Relation of Civics with Other Social Sciences

Social sciences treat of different aspects of man's behaviour in the social organisation. For instance, sociology deals with social development in general, psychology tries to deal with motives and principles of human conduct. Politics is a science of the State, its subject-matter is concerned with social relationships which imply many duties to be performed and many rights to be respected. Economics is the science of wealth and so on and so forth. But the important point in this connection is that none of them is working separately and independently of the other. All of

Inter-relation of social sciences

them start with social life of man as the foundation of their studies. Though all of them view the life of man from different angles so far as their portion of study is concerned, there can never exist watertight compartments. There is a basic unity underlying all these superficial differences. They can be regarded as different ways of looking at one and the same object, that is, man, and trying to supplement each other. Civics likewise is related to all these sciences as the understanding of the problems arising out of city-life necessitates the study of man's geographical environment, social institutions, languages, sense of æsthetics, religion, political organisation and economic structure of which he is a member. This sort of co-operation between the varied aspects of man's social nature and behaviour is necessarily involved in the attempt to understand social life as a whole.

The relation between politics and civics is very close, because they cover the same ground, follow the same methods and enunciate the same kind of principles.

Civics and Politics Etymologically both the subjects are the same -- both of them can be regarded as studying men as citizens of State. As (civics comes from *Civitas* and *Civis* which mean city-state and citizen, respectively, so also politics comes from *Polis* and *Politis* which mean city-state and citizen, respectively. But "custom and practice have restricted politics to the study of State primarily and civics becomes a science of citizenship.") Even then both civics and politics cover between them a wider ground as State and citizens are intimately related.) Both deal with man as a member of organised political society. "Accordingly both treat of the reciprocal relations of men, associations and States. Both speak of rights and duties. Both attempt to find what conditions are favourable to the attainment of happiness, what institutions are conducive to social peace and progress and how institutions should in practice be worked."

(Practically a difference is drawn between civics and politics. It is said that politics is purely a science of State and government dealing with the associations of human beings that form political units and more interested in national and international affairs, whereas civics has retained those associations which were connected to it in the old Greek city-State, is a

science of right civic conduct, and concerned more with affairs 'of neighbourhood.' "Politics traces the evolution of political forms and institutions. Civics for the most part takes the evolution for granted. Politics lays stress primarily on rights and duties and the way of securing them, civics lays stress primarily on duties and on the education and character requisite for their performance." This distinction, however, is superficial and the difference is a difference of accent and emphasis. Both deal with the same aspects of citizenship with a different emphasis.

(Psychology is comparatively recent in origin but its advocates are trying to apply psychological method to each and every aspect of man's individual and social life.)

Civics and Psychology The application of the psychological clue to the riddle of human activity has indeed become the fashion of the day. If our forefathers thought biologically, we think psychologically. (It is a science of human mind and tries to analyse the way in which human beings behave as individuals and as members of society and enquires into the nature and conditions of mental phenomena of thinking, feeling and willing) studies such factors as habits and instincts, imitation and suggestion, and generalises upon this. (Today the object of psychology is not to study the structure of human mind but to study the functions of human mind, not the analysis of the state of consciousness but study of the human behaviour. There is an increasing tendency nowadays to emphasize the importance of psychological approach to the mental ideas and moral sentiments of the people and in this respect psychology is placing at our disposal a variable information useful in the interpretation of social life and institutions, and hence the importance of psychology and its close relation to civics. A profound knowledge of psychology will enable us to understand the various emotions and whims displayed by citizens in their relation to each other, with the multitude of institutions including the political organisations of which they are the members. Such a psychological approach to human problems will be eventually useful in undermining the habit of philosophizing and direct our attention to the facts of human behaviour without which we cannot go very far in our studies. We must study such factors as habit and instinct,

imitation and suggestion if we want to understand individual and group human behaviour.

It will, however, be wrong to exaggerate the importance of psychology to civics. Psychology deals with things as they are. Naturally, for constructive values our science will have to seek the help of ethics which deals with things as they ought to be. Moreover, psychology is concerned with mental acts which must be considered in relation to the observable individual mind. Civics is concerned with the impulsive or willed relations of social beings.

Difference between Civics and Psychology

It is apt to describe sociology as the science of all social sciences. Its scope is so wide as to include the study of the origin, development, structure and functions of social groups, study of human interactions and inter-relations, their conditions and consequences. It deals with the general principle underlying all social phenomena. Sociology seeks to discover the principles of cohesion and order within the social structure. It studies the moving equilibrium of changing structure and environment, the main trends of the incessant change, the forces which determine the direction at any time, the harmonies and conflicts, the adjustments and maladjustments within the structure as they are revealed in the light of human desires and thus the practical application of means to ends in the creative activities of social man without any prejudice and wishful thinking.)Sociology, it will thus be seen, is much wider in scope than civics which deals with man as a citizen of State primarily and also as a member of other organisations, local and international, thus beginning its study with social organisations "when they began to put on a political cloak." Sociology thus becomes a genus of which civics becomes a species.) Sociology being a science of society becomes useful in furnishing our subject a vast amount of information regarding the complex nature of social institutions like family, marriage, caste, class and property. (Civics is more specialised and limited in scope being concerned with political and social man than sociology which studies the all-pervading social life of man in all its diverse phases and complexities.) However, the ideas of modern citizenship are fast changing and

Civics and Sociology

are in a revolutionary flux. Today the study of citizenship means study of all aspects—economical, religious and ethical connected with the life of man. Naturally a very close sociological approach is absolutely necessary for the clear understanding of the fundamentals of citizenship. The contribution of sociology therefore is of utmost importance to our study.

(Ethics is the science of human values determining what is good and what is bad in the behaviour and conduct of individuals and covering the whole of man both external and internal,) thus regulating "his internal thoughts, motives and feelings as well as his external actions." Naturally

Civics and Ethics

and consequently it becomes a social science as man has his being in society and the thoughts and motives in the mind of man find expression in various institutions and associations established by him in the complexity of social organisations. These external manifestations of internal human consciousness also become subject to laws of morality. (Ethical laws have their origin in custom and they have only a social sanction.) The moral ideas when they become widespread and powerful tend inevitably to become crystallised into law since the individuals that form social standards are those that comprise the State. (Naturally if the aim of civics and ideals of citizenship are to reconstruct humanity in such a way as to secure balance in every aspect of human life and to make mankind such that each individual will fight for the advancement of human civilization and culture at the same time developing individual initiative and enterprise to the fullest possible extent, evaluation of highest goal of man's life from the ethical standpoint will be of immense use.) We must also remember that the solution of the complex problem that humanity faces is not in conflict, struggle and cut-throat competition, but in ethical compromise which results in the greatest good of the individual who is the subject-matter of our science, and at the same time promotes the greatest common welfare. "If then we take modern social life in its broadest extent as including not only what has become institutionalised and more or less fossilised but also what is still growing, we may justly say that it is as true of progressive as of stationary society that the moral and the social are one." Any civic ideal is incomplete and idle without ethical background because its study and its

results depend fundamentally on our schemes of moral values, our conception of right and wrong. However, it should be borne in mind that civics takes a more practical and realistic view of man's life and his association, and does not take into consideration the implicit human behaviour as long as it is not expressed in his social conduct. If it is the business of ethics to prescribe ideals of human conduct, it is the business of civics to promote them.

(History can be described justly as a vast experimental laboratory for the student of civics furnishing him with the events and deeds of humanity in the past and a bright record of human achievements and manifestation in the multifarious aspects of civilization and culture.)

Civics and History

It has ceased to be merely a narration of the dynasties of Kings and Queens of the past ; on the other hand "it includes a survey of conditions and developments in economic, religious, intellectual and social affairs as well as study of States, their growth and organization and their relation with one another." (In short it is a study in human civilization recording the changes and developments that have taken place from age to age, both moral and material.) History has built many of the foundation-stones of our science. Reference to historical facts will not only be useful in making our knowledge comprehensive but the experiments in the past which humanity has carried out and the critical approach of history towards them will help us to reconstruct and remould our civic ideals. (The study of history will make the citizen fully equipped mentally and intellectually) and the greatest lesson that the study of history will teach him is that a citizen should not be orthodox in clinging stubbornly to the ideals of the past, but at the same time he should not be so quixotic to accept the fast developing ideas of the present, and should plan his future upon the solid foundations of the past. Human life can be bettered by a retrospective study of the past history ; a new shape can be given to human institutions at present by studying the growth, development and decay of human institutions both social and political and new ideals can be framed for the advancement of human culture and civilization upon the lessons of past. If the citizens have a thorough understanding of the entire history not of his own country

but of humanity at large, the grim realities suggested in the proverb 'history repeats itself' will never fructify but only those events and deeds of the past of which humanity should be proud will repeat and recur in future. Thus history no more remains a chronological survey of the sufferings and sorrows of the past but has in its treasure a ray of hope and guidance for the future.

Originally economics was regarded as a sub-division of the general science of the State. Political economy it was then styled and was chiefly interested in methods by which the State could be made rich and powerful. (At present Economics has widened its field to include all the individual

Civics and Economics

and social activities that are involved in the production, distribution and consumption of wealth.) The aim of both civics and economics is the same, so far as they seek to promote social welfare even though the methods they adopt for the realisation of that end may be different.) If civics tries to promote and maximize the welfare of the community through better administration of State and various other social institutions of which man is a member, economics tries to achieve the highest material welfare through better acquisition with proper and efficient utilization of resources that are at the disposal of the community.

(However, both Civics and Economics cover a common ground and are interdependent. A considerable part of economics deals with the activities of the State in regard to wealth. Moreover, economic conditions materially affect the organisation, development and activities of the State, whereas the State regulates and modifies the economic conditions of the community with the aid of legislation.) The economic regulations which are derived by the community would not be given effect to unless they are embodied in the laws of the legislature of the country. ('All economic activities within the State are carried on under conditions laid down by the laws of the State') and the prevailing theories of Government functions profoundly affect the economic life of the country.) (Our Civic ideal is no doubt the all-round advancement of the citizens and development of their personality.) This could be achieved only through the regulation of State. The huge machinery of the

State with its forceful operations cannot function effectively unless it has vast sources of income. When we try to look and consider these sources we are entering the domain covered by the science of Economics. Economic calculations and predictions often offer a very good data for the intensive study of social phenomena and often serve as guide to social legislation.

The connection between Civics and Economics is so close that the two cannot be strictly and rightly separated from each other.

4. Value of the Study of Civics

The study of Civics stimulates the principle of mutual aid which may take the form of very simple and direct co-operation. An isolated individual is impotent to solve the thousand problems that face him. By co-operative efforts the powers of the individual are multiplied and the potential skill and efficiency of society are enhanced greatly. When men are inspired with civic ideals, and order and law govern, the social organization culture develops in the atmosphere of security. (Moreover it is only in civil society that human personality develops and manifests various aspects of its nature. Full-fledged human personality is not a biological creation but essentially a product of social organization. "Social development involves the harmonious development of the constituent members of society.")

(Again the study of Civics stimulates individual interests in the circumstances that surround him and he is able to offer a better and scientific solution of those problems. It widens his outlook, enhances the moral person in him and elevates his intellectual capacities. Controversial questions are solved with cool-headedness enhancing purity of heart and peaceful tendencies in social behaviour. Life becomes disciplined and individuals do not become self-centered and capricious and they become public-spirited ready to help even to the extent of risking life if truth and freedom are in peril.)

**Development
of human
personality**

**Civics widens
outlook on life
and makes it
disciplinary**

But it is not the aggressive patriotism that dominates his mind. By consolidating and increasing national power and potentiality, he does not wish to conquer humanity with force. He promotes the ideals of justice, equality and fraternity which know no bounds of religion, race, caste, sex and nationality. He becomes a missionary to conquer humanity with the weapons of love, liberty and fellow-feeling. This results in improving the finer aspects of life both national and international. (Hence the study of Civics is essential for the planning of society in the widest sense of the term and will enable individuals to control and co-ordinate the conditions of social progress and advancement.)

CHAPTER II

MAN AS A MEMBER OF SOCIETY

1. Society and Individual

Throughout the history of mankind man is a member of society and of such groups as family, State, religious sects and the like and cannot be conceived of as an isolated individual living outside some form of social organisation. Human personality not only develops in society but is a creature of society and all outward manifestations of human personality like dress, language, morals and culture are social products. They are not personal inventions but social heritages. "What we call human nature is only acquired through social relationship."

Some have viewed society as a social organism and some have thought of society in terms of general will and mind above and distinct from the individual mind and will. Both these views try to glorify society and the subjection of the individual to society. But at the outset it must be said that there is no antithesis between society and individual. Society is no more than individuality intrinsically connected and social atmosphere is composed of interactions of individuals,—their material environment, their culture customs and traditions. The sociableness or collective impulse of man in the primary phases may have its roots in economic necessity, or as a means of protection against wild beasts, and it may have changed and assumed various forms according to the needs of the time but what is important are not reasons for collective impulse but the bare fact. Language and tradition foster and cement social relationships and social institutions, and social inheritance binds generations to each other. The children are born in society, their characters are also moulded in social organisations. Naturally when social institutions pass from one generation to another there are very few chances for modification, the

process of displacement being very gradual. Moreover within the society there are numerous institutions connected with each other seemingly running their own course but really dependent upon ultimate social relationship for their existence at the same time keeping the social framework intact. "Individuals and even entire peoples little imagine that in following their own interest and often in struggling with one another, they pursue each in their own way, as a conducting filament, the design of nature, to them unknown, and co-operate in an evolution which even if they had an idea of it would signify little for them." This explains not only collective livings in society but also their continuity and persistence.

Society a complex of associations and organisations Society thus understood includes every kind of relationship entered into by men, organised or unorganised, direct or indirect, conscious or unconscious, and is without boundary or assigned limits. In its turn it gives rise to numerous interconnected, overlapping institutions and associations but is never exhausted by them. "The social principle in man is of such an expansive nature that it cannot be confined within circuit of family, of friends, of a neighbourhood; it spreads into wider systems and draws men into larger communities and commonwealths. Since it is in these only that the more sublime power of nature attains the highest improvement and perfection of which they are capable."

2. Regulation of Social Life

Law and Morality Society therefore can be defined as a group held together by a system of common rules. It is with the help of moral precepts, legal rules, conventions, customs and fashions that social life is regulated. Moral rules prescribe certain acts because of their intrinsic goodness or the intrinsic goodness of the ends which are attained through them, and forbid others because of their intrinsic evil or the evil produced by them. By law is meant the body of social rules declared and enforced by a constituted authority. The essential difference between *morals* and *law* is that in the case of morals there is no organised and powerful authority except

society to enforce the ideals prescribed by morality—the sanction comes at any rate in the higher stages of development, to be looked upon as essentially inward and dependent on the free assent of the agent ; whereas in the case of a law, it being the creation of a stable and well-established political organisation, there is compulsion, a command which includes physical coercion, nullification of prohibited acts and exclusion from the group, to which individuals have to submit.

Conventions are generally upheld rather by opinion than by constituted authority. They are no doubt limited in range

Conventions

being respected by a group or section in a community but sometimes inspire emulation and imitation by members of other groups. They, however, hardly touch the fundamental and common needs of life as the moral and legal rules do. They are based, more or less, on the peculiarities of certain groups and sections of society. Fashions are in their nature relatively temporary, beginning as innovations and spreading by imitation. The fashion, as soon as it is adopted and cultivated in the minds and habits of the people, loses its novelty and becomes outdated.

“Custom has usually been interpreted in accordance with the psychological laws of habit. It has been regarded as a way of behaviour which has been general in the community and has come by frequent repetition to be performed quasi-automatically.” Naturally we feel quite uneasy to

Custom

break away from custom and any change if connected with the custom is strongly resisted. Custom is surrounded with a sort of social feeling and sentiment and the individuals instead of being reluctant to the call of customs, give a quick response to it by treating it as a rule or norm of action. Custom has its roots therefore in the person, and as such it is regarded as an ultimate source of law, influencing widely the development of legal and political institutions. The ruling authority in an authoritarian State may in some cases override the law which is its own creation, but it has to show its respect and due regard for the custom. Law has its origin in custom, custom depends upon the sense of social and personal morality. Naturally law conforms with the moral sense of the community in most

democratic States. Thus taken as a whole, law, customs, conventions and morality function as the regulating principles of social life.

3. Foundations of Social Life

Compared to many members of the animal kingdom, man, if considered as an animal, is definitely inferior physically. He has compensated for this physical weakness by organisation and co-operative social endeavour with his kind so that his modern representatives are able to conquer any powerful beast living on the planet. The discovery of an articulate language has enabled him to put his culture on a verbal basis, thus making possible the development of consciously created forms of culture and institutions. "Moreover, man is by nature a social animal. In their struggle for livelihood and defence, members of human race automatically and spontaneously came together and it was felt necessary to have some rules regulating human behaviour. Such rules were not in the first instance creation of a deliberate plan but in the process social habits, institutions, classes and responsive groups were created which resulted in the building up of a complex social organisation.

The social interest is derived from gregariousness. This instinct has a profound influence on the mentality of the members of the group or herd and thus it tends to mould the entire system of religion and morality. What man needs is response of others and active interplay of interests and in solitude he is deprived of both these, which results in creating a devastating effect on his mind.

Parental love and feelings can also be regarded as the foundations of the social life because life within the family provides the child with the earliest pattern of behaviour which has a lasting and enduring effect on the moulding of its character. According to Freud, social life is the result of a struggle between love and hate or rather between the erotic and aggressive tendencies. The deep-seated feelings of aversion and hostility infect even the most intimate relations between people. Social life depends upon the curtailment and control of this impulse which is accomplished with the aid of love.

“Cultural or social life is in great measure based on the renunciation or restriction at once of the aggressive elements in human nature and of sexual appetite. This is achieved by various means, especially by the formation of ideals and the mechanism of identification. By the aid of these aggression is turned inwards and leads to the evolution of the inward monitor we call conscience.”

But more than the gregarious instinct is the need felt by man to go outside of himself and enter into relationship with others. This does not result from the will to co-operate but rather it is the need of some kind of response from others and the tendency to respond to them. In this tendency may be involved, besides sex, various other sentiments, the benevolent or protective tendencies, the impulse to pity or to help or protect others in need. “The craving for a response is also characteristic of the antagonistic impulses and especially of the desire for mastery and power and it is also involved in the desire for the approval of others and the dislike of their disapproval.”

The majority of people today are engaged in actions executed with the co-operation of others and in the everyday situations—schools, churches, art museums where men co-operate to teach children, worship God, view the artistic achievements of the past, factories carrying out their industrial enterprises supplying our material needs, the radio and movie bringing before us the thoughts and deeds of men all over the world such and thousand others—we could see the extent and variety of social organisation which man has brought into being to make human life more efficient and pleasant. Social organisation therefore implies the efforts of men to accomplish certain objectives and social groups like family, the corporation, State and the like structures that are the outcome of such effort. “Much of social organisation is the result of deliberate effort and conscious thought but the considerable portion of it is natural, spontaneous and unconscious.”

Social organisation therefore is the product of the very nature of man himself and even though it means limitations to individual whim, caprice and initiative, this social restraint has been the price man has to pay for the indispensable service of co-operative endeavour.

In earliest times the social relationship and social deductions were of rudimentary nature and considered as an outcome of divine will. There was no rational purpose or consciousness of will behind the social organisation. However, the growth of human mind, advance of intelligence with the spread of education and achievements in science and technology have enabled man to transform the spontaneous organisation into deliberate and willed groups.

Society can thus be regarded as a condition precedent for the realization of human ideals and impulses which are moulded and given definiteness by social life. "Man only becomes man among men. The social environment tremendously influences the mental development in man. It acts selectively upon the inborn potentialities of individuals eliciting some and inhibiting others." Expression, repression or sublimation of these innate tendencies and potentialities which have a certain elasticity is conditioned by social tradition. Moreover knowledge has its roots in society which serves as a stimulating and selecting agent "encouraging and assimilating everything which fits in with its general requirements and resisting and repelling whatever is incompatible with its needs." The building up of cultural systems like languages, sciences and arts is only possible in society. These vast systems come to the individuals from without, circumscribing his mind and even though through the process of transmission they become the resultant of the vast interactions of minds, they have a life of their own, an innate power of growth and development and independent of any particular minds.

4. A Note on Castes and Classes in Society

I. Class Structure

Class structure is characteristic of every society save the primitive society, whose homogeneous character was destroyed with the development in the institution of private property; wars and conquest and crude equality were replaced by social differentiation and distinction in rank, authority and power. The communal ownership of land disintegrates to become private possession of hereditary nobles and chiefs. This monopoly is further strengthened with the economic advance and there is now not only individual differentiation but social

stratification. Society becomes split up into different social classes, with kings and hereditary nobles at one end and the entire mass of population composed of slaves, serfs and peasants, at the other extreme end. When the scope of property extends over animate things in pastoral and agricultural ages the slavery becomes a fully developed and recognised social institution. The structure of society is moulded like a pyramid with hereditary monarchs and nobility at the top, wealthy merchants and skilled artisans in the middle and vast majority of remaining population at the bottom. And we are told in justification of slavery that "a state of human servitude or slavery is compatible with God's laws" and is wise, just, beneficent and ordained by nature.

The territorial character of State and growth of production power did away with the institution of slavery and what followed was not the system of "personal freedom" but the regime of serfdom or feudalism wherein the serf was tied to land which belonged to the king who distributed it among the nobility who paid his tribute to his liegelord in return for his protection. These social distinctions hardened in time into the system of Estates whose social position in the hierarchy of society is regulated and defined by law or custom. The sovereign and nobility are at the apex of society and next to them and closely allied with them are the clergy, below them come the merchants, then hand-workers and peasants. The duties, functions and rights of each of these social strata were clearly defined but the higher classes were in possession of special political and economic prerogatives and privileges.

This system of social estates in its turn gave way to social classes based on private ownership of the means and methods of production in the form of capital. Profound economic changes were at the root of capitalist society—the discovery of new lands opened up possibilities of markets the needs of which the feudal productive machinery was unable to satisfy; production of wealth outran the current needs and savings accumulated, townships developed into cities with the growth of modern industry and a new manufacturing class grew up—industrial advance was made possible by scientific inventions which resulted in great demand for industrial goods, and the

culmination of it was the creation of a landless proletariat who had nothing but their personal labour to sell.

The point of conflict in this new social order was between bourgeoisie who owned the means of production and the labouring class who were nominally free but were neither attached to nor owned any means of production. The dominant class was not the outcome of hereditary aristocracy but of the aristocracy of factory and finance. It vehemently justified the institution of private property and "based philosophy and ethics on empiricism and made morality into a purely personal matter. Indeed it isolated and abstracted every aspect of human life from every other, as if to conform to the minute division of labour and specialization it had brought about." However, in course of time "it came to exhibit those features which characterise all societies that show great differences in wealth and leisure among the social classes." Being in possession of political power, proper attitudes were engendered and poorer classes were kept in subjection and were taught to be meek, humble, obedient and industrious. Moreover, poverty was justified as a punishment for sin, as a creator of character, spur to achievement. Naturally "differences of languages, dress, education, behaviour and manners of social intercourse become increasingly marked."

However, it is argued by sociologists who deny that due to standardisation of habits, dress and customs, largely the result of the amenities made easily available and afforded by the advance of science, the social stratification has been done away with. Moreover the social ladder is co-extensive, mobility so great, accessibility from one class to another so easy and predominance of community interest over class or sectional interest so strong that it is illogical to speak of social classes. But "it may be seriously questioned whether there is any such close correlation between social status and ability—barriers to movement remain and the higher ranks of society are still largely self-recruited. The higher professions are still mostly closed to the children of the poor and there is some evidence which suggests that there is a tendency for the leaders of big business to be derived increasingly from the well-to-do classes." In the present-day society, therefore, the source and amount of income are the most important criteria demarcating groups.

“Externally these groups exhibit certain class co-efficients, internally they manifest a certain cohesion and consciousness and certain attitude to the members of the other groups.”

Even though it is difficult to make sharp class distinction in society, it is a mistake to suppose that they do not exist. On various tests like income, degree of personal independence in work, the security and opportunities it gives for exercise of authority, we can demarcate social classes into proletariat composed of the vast mass of wage-earners, and the upper class consisting of capitalists, landlords, higher officials and professionals and in between the two linger the heterogeneous middle class—an all-inclusive class of small entrepreneurs and rentiers, small professional men, shopkeepers, and traders “who seem to become more proletarianised as their security and independence is threatened by chain stores and huge combines.” Marx predicted the disappearance of this class and division of society into two distinct and sharp groups—the bourgeoisie who own the means of production and the proletariat—a prediction verified by the objective changes in the economic structure of society today.

II. Caste System in India

Caste system as it exists at present in India must be distinguished clearly from the social gradations found among all nations wherein there is no religious bar preventing mobility from one social stratum to another and there is also no restriction regarding the marriage and choice of occupation. The social strata there are flexible and not reduced to watertight compartments. In India the community, especially the Hindus, is divided into totally separate groups, with an elaborate code of caste rules so that nothing like inter-marrying and inter-dining exists, to speak less of mobility. In India birth determines irrevocably the whole course of a man's social and domestic relations and he must throughout his life eat, drink, dress, marry and give in marriage in accordance with the usage into which he was born. Not only caste system has been the basic foundation of Hindu religion but it has influence to a veritable extent on the general Hindu outlook and the most outstanding feature of Hindu social life.

It is very difficult to trace the origin of caste system but it can be said that "division of society into caste must have been the work of some inspired individual who foresaw the advantages of a systematic division of labour." Caste is the normal development of ancient Aryan institutions which assumed this form in the struggle to adapt themselves to the conditions with which they came into contact in India. This distinction became rigid and watertight. Moreover, distribution over a wide area tending to multiply groups, contact with the aborigines encouraging pride of blood, the idea of ceremonial purity, leading to the employment of indigenous races in occupations involving manual labour, while the higher pursuits were reserved for the Aryans ; the influence of the doctrine of metempsychosis, which assigns to every man a definite status determined by the inexorable law of Karma, the absence of any political power to draw the scattered groups together and the authority which the Brahmanical system acquired are taken to be the factors in the theory of caste origin.

But the most characteristic feature of this caste system is its unparalleled rigidity which survived in the face of invasions. There is every reason to believe that in the beginning the caste system was fluid. It is very difficult to say when caste system lost its fluidity. It may be that the original taint of inferiority attached to the conquered aborigines in the course of time permeated in the social system, or assignment of ritual functions in the hands of a selected few paved the way in concentrating power in their hands who used it for social aggrandisement. However, we cannot say whether the settled state of society or the ignorance of masses favoured caste and thus implemented hereditary continuation of function. Even though caste system cannot be rated as a social distinction it had in its own time certain distinct advantages.

The caste system had at its root some crude form of division of labour which makes for the economic efficiency and strength. The secrets of business came down from father to son hereditarily and the son acquired proficiency in the family atmosphere which was important in the absence of any body of public institutions imparting technical details. Moreover, life was made easy for younger generations who inherited the reputation of their parents. "The caste organisation is to the Hindu

his club, his trade union, his benefit society, and his philanthropic society. Moreover, the caste system created that solidarity and sense of unity that enabled Hindu society to face the shock of political invasions and maintain stability of Hindu society. It preserved purity of blood, the mental, and physical qualities within a group and created a group consciousness so that individuals always subordinated self-interest to the interest of the group. It may be said that the caste system has all the virtues of a static society which desires to conserve rather than to advance and which prefers order to progress."

Whatever may be the merits of the caste system, today at least it deserves an outspoken denunciation as it acts as a drag on progress, a machine of oppression and intolerance leading to political weakness and disunity. India today is a patchwork of inconsistent ideologies with a lack of sense of unity, oneness and strong nationality the cause of which can be traced to the caste system. As nowhere the principle of endogamy is observed it leads to constant inbreeding and deterioration of superior stocks. Rigid immobility results in sexual disparity which in its turn entails social evils of dowry. Moreover as men are not allowed to take their education and choose their occupations according to their natural capacities and aptitudes, the nation suffers as men are put in the wrong places and no correspondence is maintained between aptitude and function. The rigidity of caste leads to immobility of capital and labour and moreover prevents the progress of large-scale operations not only monetary but intellectual as well, and there is also a differentiation and no standardization regarding economic values.

The caste system also creates a bad psychological effect as it fosters in the higher groups a disinclination and nausea for manual labour and entails inequality by breeding a false sense of superiority in the higher caste and a fatalistic tendency of inferiority in the lower caste—so dangerous to the development of human personality. Untouchability is the result of the operation of caste forces and the unfortunate victim "is constantly a loser in ordinary commercial operations through his inability to enter a shop or even to pass through streets where shopkeepers dwell. Social ostracism, so degrading,

persisting through immemorial centuries has naturally constituted a most serious obstacle to manliness, independence, and capacity towards self help.

The introduction of western civilization has to some extent been successful in breaking down the rigid caste barriers. The linking of the village with the outside world has enabled many to leave the traditional occupations and seek new employment, and especially the members of higher caste due to increasing pressure of economic necessities have been forced to accept professions they were forbidden to take. The growth of the spirit of individualism and scepticism, preponderating influence of the ruling race and education have helped to undermine the evil spirit of caste exclusion. The lower castes are becoming more self-conscious and alive and are organising themselves to assert their rights and privileges. The general political tendencies have pervaded even the higher caste and conservative Hindus to initiate reform and social equality. This is strengthened by the feeling that if Hindu community has to live honourably, it depends upon how they put their house in order. Moreover, Mahatma Gandhi's initiative and movements have helped a long way in removing the curse of untouchability.

However, it would be a mistake to suppose that caste system is moribund. It holds sway in various parts of the country in unabated strength. Development of self-consciousness is no doubt welcomed but unfortunately it has led to scramble for power and rights conferred have been misused. The hierarchy in social gradations and subordination still prevails and each caste is ready to level up itself and is not wishing to let down in the process of levelling downways. What is necessary is a social revolution on a tremendous and vast scale that will shatter the old dogmas of conservatism and orthodoxy.

CHAPTER III

SOCIAL INSTITUTIONS

Property

Introductory

Not only in the life of individuals but in the life of the whole society we find that the inborn possessive instinct occupies a prominent place. We can trace the same sort of behaviour of people striving hard to acquire property for the satisfaction of physical needs or as a means to further acquisition of consumable goods or as a method of acquiring power over other human beings throughout the history of mankind. Everything else is subordinated to this motive and the psychology of early human groups, even enlarged from clans to nations, generally held a traditional acquiescence in class distinctions and distribution of property which belonged thereto. That is why the history of family, Church and State could be interpreted and read as the history of property.

**Possessive
instinct
is inborn**

Property is a complicated legal concept and is the exclusive right of possessing, enjoying and disposing of anything. It consists in the free use, enjoyment and disposal of all belongings without any body's interference or diminution save only by the laws of the land, which are extremely watchful in ascertaining and protecting this right. It does not simply mean possession of things or acquisition of material objects but indicates exclusive and permanent control over such things. It is "the complete right of exclusive use including the right to destroy and right to alienate. This right of property requires social recognition because today property is more the result of co-operative effort than anything else. It has an important social aspect and is never absolute but relative. Under present circumstances property has come to

**Meaning of
Property**

mean power because it confers upon the possessor not only a control over things but control over human beings through things.

2. *Type of Property*

One fundamental division of property is that between tangible and intangible property. Tangible property consists of concrete things like land, livestock, tools, implements, jewellery and money. Intangible property is mainly made up of legal rights to certain uses and privileges, such as copy-rights, patent rights or goodwill.

Tangible and Intangible

Property is also divided into real property and personal property. Real property includes immovable objects like land, buildings, whereas personal property consists of movable chattels like goods or money. "As a matter of fact this distinction between real and personal property is that between immovable and movable objects. Things personal are goods, money and all other movables which may attend the owner's person wherever he thinks proper to go."

Real and personal

It is usual to think of property as possessed by individual but property concepts and practices are far wider than this.

Not only property may be owned by individuals but by groups of different sizes and they have the same specific and passionate notions of property rights as any individual.

Individual and collective

On this ground it is therefore possible to distinguish between individual property and collective property.

3. *Property—A Further Elucidation*

At this stage it will be proper to point out that ownership and possession of certain things are quite different legal concepts. "Ownership means that a person has all the legal rights which relate to the object owned and that all necessary facts exist to support this right of ownership. In other words, ownership is a complex of rights supporting possession, whether actual or not. In modern law possession means a direct physical relation to the object possessed power over. Viewing broadly, ownership and possession are both legal relations but

ownership is more the passive right while possession is both a legal right and an active physical fact. Today naturally ownership tends to become impersonal and more or less dispersed and may not be related to the performance of duties or the possession of virtues but it definitely means control over something, under modern circumstances over capital, "and that in a regime of free enterprises the control of capital involves the power to direct the lives of those who depend upon the application of capital to production." A regime of private property understood in this sense indicates that property instead of being a creature of law, laws have grown out of pre-existing practices and usages and constitute a rationalisation and perpetuation of social customs relating to use and possession. This means that possession of property degenerates into possession of power. This leads to the economic, political, social and intellectual exploitation of the people who are in their clutches. And the State dominated by these owners of property gradually finds itself facing the all-pervading task of guarding and enhancing the interests of these people only. This holds good even in the best form of government, *viz.*, democracy. However, at this juncture it is necessary to make one essential concession to this institution. Because when we speak of the function of the property we are making a reference to a definite form of property and not to property in general or common property or some form of corporate property, and the function that property is expected to perform is affected by the extent and nature of the right or by the restrictions which limit it and also by the nature of the object over which it is exercised by its source and even by its amount. Naturally one right of private property may serve a useful and beneficial function; while another might be disadvantageous and harmful and we cannot forget the fundamental interrelations between all forms and aspects of property, their mutual interactions and interdependence. While attacking the one we may harm and impair the other. At times private control of certain things may be good for the advancement and welfare of the community and sometimes public control may prove to be a better solution. This is in no way a justification of private property but a note of caution that we ought not to regard criticism of any given kind of property as criticisms of all kinds of property. The evil lies not in property by itself

but it is to be found in the nefarious ways in which property is made use of for the exploitation of people who do not possess property.

✓ 4. *Origin of Property*

There is no unanimity of opinion regarding the nature of property in primitive societies. One school of ethnology and sociology is of the opinion that property was held in common by the whole community and communism prevailed. Another school of thought has combated vehemently this notion of primitive communism, upholding the dogma of the sanctity of private property. Neither of these extreme views can be testified with historical facts "While communal ownership predominated primitive life, there was plenty of private property. There was a rather general trend during primitive times from communal to family holding and movable objects usually became private property." The result is society without abnormal acquisitiveness, without clear-cut communism but co-operative combining through its customs, individual initiative with a not unequal distribution of wealth. However, it should be borne in mind that when we talk of primitive men we are speaking of men living relatively late and advanced stage of primitive culture and we do not talk of property usages among the earliest type of men.

In the hunting and the fishing stage of culture, the hunting and fishing lands were owned by the entire social group in which individual was in possession of his own tools and weapons. The extent and fixity of private property increased with the advance of culture.

In the pastoral era we find that the pastoral lands were communally owned whereas livestock was privately owned, though often this ownership was vested in the family.

"It is when we come to tillage that typical property system as respects land undergoes a decided change," and we see a marked development of private ownership. It was still the product of the land and not the land that was the object of desire and naturally the person who cleared

Property in primitive societies

Later developments

In agricultural societies

and cultivated land was unwilling to surrender his product to the community. There was a tendency towards growth of individual or family ownership of land and due to the fact that among some advanced primitive people land was regarded as the property of chief or monarch, "the ground was prepared for the transition from primitive to historical culture."

In general it may be said that among primitive peoples in regard to the ownership of implements, weapons and land what is acquired or made by a man or woman by personal exertion is regarded as his or her private property. Similarly what is acquired or made through combined labour of a group is usually the common property of the individuals forming the group. "Naturally the psychological elements involved in a sentiment of ownership supporting property, the acquisition of which has involved the mixing of labour, are not far to seek." In the making and carving of an implement is involved the satisfaction of the impulse to construction and aesthetic joy in good craftsmanship. As the object prepared may be subject of envy of others, sentiments centre round self as well as the creation of self. Moreover, impulse of vanity and desire for social recognition are potent factors besides utility, durability, rarity as determinants of value and the desire for possession.

With the so-called dawn of history in the ancient Near East property usages and rights were embodied in formal legislation and enforced by the absolutism of the ancient monarchs who claimed the formal ownership of land. Usually they gave out land to their followers in the form of gifts and leases at the same time conferring most of the rights of ownership of private property, the chief limitation being that it could not be disposed of with the same freedom that prevails under the system of complete private ownership.

In the middle ages pastures and woodlands were owned by community at large but cultivated land was subject to communal control in the sense that each free cultivator had a right to the land he cultivated and its products, though he could not own it or dispose of it. Christianity warned against too much accumulation of private property lest one became absorbed with this world's goods and neglected the exercise

essential to insure salvation in the world to come. So long as cultivation was in its rural stages the outright owner of the land was the king or the superior feudal lord. Possession of land was bestowed by the practice of investiture and it carried with it the responsibility of rendering military service or money payment to the overlord. The agricultural system of middle ages revolved round the manor—the part of it being cultivated by serfs for the lord of the manor and the remaining under communal control. Monasteries and churches often owned vast tracts of lands and were cultivated under similar conditions to those which existed on manors. “In short, middle ages represented reversion to a predominantly communal economy and extensive limitation of private property. It has been not inaccurately observed that in middle ages the property system rested more upon personal and legal relationship than it did upon clear title to ownership. But as medievalism wore on, the communal aspect and relationship system tended to give way slowly before the inroads of private enterprise.”

With the dawn of industrial era we come to the stage when private property in land, business, accessories and movable objects becomes the rule and is under political and legal sanction and protection. The communal ownership of land was wiped out and serfs became either peasants or wage-earners and those who owned the lands also owned the means of production.

It is the rise of capitalism and money economy that can be regarded as an evolutionary change in property and the final triumph of the notion of property in money and freedom to use it, and the use of money to acquire more property through lending, investment and speculation became generally approved. “It was thought necessary to accumulate property for further investments, and ideas of profit seeking and surplus were universally accepted.” Economic philosophy bestowed its full blessings upon the institution of private property. “Nothing so generally strikes the imagination and engages the affections of mankind as the right of property.” Property which was in this era dynamic, real and active gave an incentive to personal effort.

**Property
today**

**Private
property
and
capitalism**

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in economic life. Even though property becomes the acknowledged principle and foregone conclusion as the momentum of Industrial revolution went on accelerating and when it has played its full part, we see that it is not the majority that is owning property but factories, mines and fields are in the hands of individuals or group of individuals and are worked by those who do not own them for those who do. The result is that the ownership of the major means of production and distribution are concentrated in a few hands.

But private property and production for profit do not exhaust the field of capitalism. It implies operations on large scale and especially the fact that labourers are free to sell their labour power. They do not form "part and parcel of the means of production as in the case of slaves, bondsmen, etc., nor do the means of production belong to them as in the case of peasant proprietors; they are, therefore, free from unencumbered by any means of production of their own."

Implications of capitalist societies

The significant point which we must remember is that under modern economic conditions private ownership is passive. There is no unification of ownership, control and management of business. It is control that is a dynamic and active force in business enterprise and not ownership which simply means a precarious legal claim, for the use of property by others. This is no doubt a tremendous revolution in the character and use of property.

However, now we seem on the eve of a new era in which many startling changes may be brought about in property and usages. In Soviet Russia State Socialism was thoroughly established and with it came the end of the private ownership of the means of production and distribution. In so-called middle-way "countries, like Sweden, and in Fascist States different degrees of State capitalism were instituted. This innovation imposed serious restrictions upon many property rights and substituted actual governmental ownership of such things as public utilities and natural resources. Under the pressure of war, the movement towards Government control and Government ownership has been rapid even in the Democracies."

Property in prospective

CH. V

5. JUSTIFICATION OF PRIVATE PROPERTY AND ITS FUTURE

Property is a question of conflict between haves and have-nots. It is not the instinct of property as such but the institution of private property, which is relatively late in the experience of mankind, which has been the object of attack. This resentment is the result of changing circumstances in the world of to-day ; men no longer believe in class distinctions as a natural phenomenon. Education has reduced to a greater extent the intellectual inequality and gap between various classes of society and the easy access to amenities for all has a levelling effect in breaking down the traditional class sentiment. Moreover a materialistic tendency is developing among masses and science has revealed the realities of life to such a magnitude that religion has lost its former grip over individuals and the constructive feelings of respect and veneration for it have shrunk. The growth of politically-minded citizens is also proving a menace to the traditional rights of property.

Every social institution is to be judged by its contribution to the advancement of human cause, enhancement of social welfare and progress. Property, especially private property, which has never meant a natural or inherent right of property, is essentially a social institution and it is to be justified and vindicated only in the light of its social contribution and liabilities. Private property was said to be useful in providing the bare necessities of life. This might be true of the earliest periods of human history but as humanity advanced and developed into a complex social organisation it was the communally-held property that assured the subsistence. Even though private property may have performed this function it by no means necessitates the existence of private property. But the most usual argument

**Private
property
as a Social
Institution**

on behalf of private property is that it may supply the most dynamic human initiative and stimulate the highest degree of human efficiency. This argument holds good only if the standards and judgments prevailing in society relate to property and money. With the change of such standards in the society, the argument loses its force because individuals are not guided only by pecuniary greed and there are many social values which are as much effective in stimulating activity as is private property. However, it must be said in favour of this argument that productive effort, industrial expansion, ability to save and incentive to investment are no doubt stimulated by private property, and until recent times this useful service was rendered by the institution of private property. But now the results of property accumulation are seen to be disastrous and anti-social, wealth tends to concentrate in the hands of a few at the expense of majority of people and society is divided into two distinct classes with antagonistic ideals and tendencies. Due to the inequality of incomes consequent to the misuse of private property, the capitalist system is on the wane, and private property has been one of the fundamental basis of capitalism.

Further private property is considered valuable to-day for social prestige, display of pomp and glory and as an easy way to power. But it is through unusual and conspicuous waste that this prestige and glory is displayed. Naturally property promotes idleness, indolence and passivity. In order to gain and hold the esteem of men it is not sufficient merely to possess wealth or power. The wealth or power must be put in evidence, for esteem is awarded only on evidence. Property holding and property motive therefore lead to the exploitation of society and disregard to public interest. This institution of functionless property is becoming more and more the greatest enemy of legitimate property. Modern economic conditions have all but abolished property for power. A man of property is said to be one who has stake in the country and is not likely to be swept off by emotional considerations. It also promotes a sense of independence and gives the individual a deep sense of pleasure and satisfaction. "The magic of private property can convert sand into gold."

Property as a social necessity

From the ethical and psychological point of view it has been argued that "private property is desirable for its influence upon the human personality—that property rounds out the personality, gives a sense of responsibility and security and helps to provide a salutary discipline over ideas and conduct." But it is also true that the excesses and abuses of property have done more than anything else to stimulate human brutality, selfishness, exploitation and misery. By becoming an instrument in the hands of different men at different times property has committed many mischiefs and blunders.

Property an essential factor in the development of human personality

Evils and abuses of private property

In ancient days perhaps the greatest evil of property was slavery, mass exploitation, demoralization and impoverishment. In the middle ages it became the monopoly of Church which became enormously rich at the price of its loyal followers. "When at the end of middle ages absolute monarchs arose, they created their brilliant, corrupt and expensive court life on the basis of crushing exploitation of the majority of the citizens." More horrible and terrible are the sufferings of the masses with the new set-up of Industrial Revolution. With the Industrial Revolution set in the forces which gave the institution of private property its present shape and ultimately divided the entire society into two conflicting classes, the haves or the capitalists and the have-nots or the proletariat whom we generally know as masses to-day. It has enormously increased the cost of living. Unemployment and poverty ravage the mass of population. Moreover private property as a social institution opposes desirable social change and economic reform. Property possession leads to the acquisition of political power, and social legislations are thwarted and suppressed which results in economic stagnation and depression. This results in bringing about violent and bloody revolutions and thereby "property" is committing suicide by provoking the establishment of a type of society in which property interests and holdings will be severely curtailed if not wholly eliminated. Laski makes a very brilliant exposition of the case against the present order. "The present system is inadequate from whatever angle it is regarded. It is psychologically inadequate because for most,

by appealing mainly to the emotion of fear, it inhibits the exercise of those qualities which would enable them to live a full life. It is morally inadequate, in part because it confers rights upon those who have done nothing to earn them, in part because where such rights are related to effort this in its turn has no proportionate relevancy to social value. It makes part of the community parasitic; it deprives the rest of the opportunity to live ample lives. It is economically inadequate because it fails to distribute the wealth it creates as to offer the necessary conditions of health and security to those who live by its processes. In the result, it has lost the allegiance of the vast majority of the people. Some regard it with hate, the majority regard it with indifference. It no longer infuses the State with that idea of purpose through which alone a State can prosper."

It is also contended that this instinct of property leads to war. "Our goal of order and peace can be reached only by a relentless concentration on the single purpose of abolishing private property in the means of life." The inequality which is the inevitable consequence of private property generates sentiments of indignation, frustration, recklessness and rebellion.

Rightly or wrongly, consciously or unconsciously we are advancing towards an era in which private property will be effectively reduced. The economic and political conditions to-day are an indicator of the fact that momentous social and economic changes are going to take place. The social and economic reforms trying to enhance the well-being of all are more and more valued in all States so that huge expenditures have to be incurred. This means taxation and increasing public debt which seriously menace the existence of the whole property system.

The growth of totalitarian States in the form of State Capitalism and State Socialism has sounded the death knell of private property and it is argued that "some form of collectivistic economy directed by industrial engineers appears to many to be the only system compatible with the technology of the twentieth century."

Inroads on property

Property in future social order

PRIVATE PROPERTY—A FUNCTIONAL RIGHT

The abolition of the institution of private property will have its dangers also. The claim put forward by the individual to control things in the degree that such control enables him to be his best self cannot be disregarded. If we have learned anything from the evolution of institutions it is the lesson that an enforced communism of habits is always dangerous. To share in a common life ought not to mean that the common life is built to a uniform measure. "The life we lead must leave room to us for choice or else it ceases to be life at all. Our claim to a minimum property must be therefore a claim to choose, at that minimum, the things we desire to satisfy the claim."

Accepting that the claim is a universal right, that right is functional. It has its counterpart in the form of a duty. Right to property is only recognizable on the conditions of functions performed due to the possession of property. Society is not bound to maintain the right of an individual unless he in turn pays something for his living in that social organisation. Naturally those who acquire property in the form of claim as a result of other men's labour, have no legitimate rights to be in possession of that property. To enjoy property earned by one's own effort is morally and legally justifiable; to enjoy property as a result of other men's labour or to enjoy owned property is to be parasitic upon society. Such men evade their contribution to the social welfare measured in terms of material goods. "It is possible to admire the architect of a great fortune; it is not possible to admire those who live by his achievement." The result being that the amenities of modern life afforded by the tremendous achievements of civilization and culture become the monopoly of a parasitic few but if all men live by the reward of their own effort the social heritage is placed at the disposal of all. What is necessary is equal opportunity for all to enjoy the best of life, as well as

readiness of all to face the realities of life without being shielded behind the curtains of illegitimate heritage.

Naturally property "is entitled to exist where it results from personal effort. It is rational when it is the outcome of function."

Family and Marriage.

1. ORIGIN OF FAMILY

The family today seems to be a more disturbed institution. The divorce rate is high and the number of separations is large. Families without children are numerous. This situation is a source of anxiety to many persons, because the home is the place where the personal and social virtues are harnessed and developed. "The type of citizen one becomes is related closely to the type of mother, father and home life one has."

Family can be regarded as a more or less durable association of husband and wife with or without children or of a man or woman alone, with children. The sex and parental functions are the distinctive features of family life and are common to the family of all cultures. It must be noted, however,

Meaning of family life

that the family may not be necessarily limited to these individuals and functions. The entire structure of the family and likewise its functions are flexible and vary at different stages of culture. It will be seen that family can extend into a household by becoming larger in size, including grandparents, relatives, in-laws and grand-children, and may in addition to the functions mentioned above, provide economic services for its members, facilitate education for them, give them religious guidance, furnish recreation, protect them against dangers of various sorts and provide affection and social intercourse.

Like all other institutions, therefore, family is a social and historical product, liable to change and modification. The

Basis of family life

fact that human beings, being constantly accessible to sex stimulation and having no distinct mating season, facilitated and encouraged permanent sex mating. This bond

is further strengthened by the desire to bear fewer youngsters unlike other animals, and moreover, the longer period of dependence and helplessness on the part of human offspring has been regarded by many as the basis of organised human societies. That does not mean that many traits like modesty, chastity, aversion to incest, social approval of sex activities which dominated historical families, are instinctive with man. They are the result of social experience and of cultural origin. Family, as a matter of fact, rests upon psychological facts, and highly varied forms of sex relations and marriages are a distinctly human contribution and the outgrowth of the cultural and institutional experience of the human race.

Naturally, family can be regarded as an institution of gradual growth. The foundations of family life imply one essential truth that over the sexual impulse has supervened on the part of the man a permanent interest in a woman as a person with whom his well-being is united and a consequent interest in the children born of her. Naturally, "everyone actuated by the interest should recognise and be recognised by everyone else to whom he ascribes an interest like his own, as entitled to behave towards the objects of the interests in a manner from which everyone else is excluded." This state of affairs is only realised in an advanced stage of reflection and privileges and privacies of family life are only possible within narrow societies. Just as the realisation of the fundamental truth that it is my duty to regard another's good as mine own good, is the basis of family life, society, which is an extension in a broader and wider sense of the family life, is also held together by the recognition of a common good. It is quite likely, therefore, that the existence of family presupposes the existence of a wider society.

"The history of the development of family life is the history of the process by which family rights have come to be regarded as independent of the special custom of a clan and the special laws of a State, as rights which all men and women as such are entitled to. It is a history further of the process by which the true nature of these rights has come to be recognised as rights over persons, rights of which persons are the objects and which, therefore, imply reciprocal claims on

the part of those over whom they are exercised and of those who exercise them." In this process of continual development of family life, establishment of monogamy, the abolition of *patria potestas* and the emancipation of women are all involved. If we regard that all men and all women are entitled to marry and form households and that within such a household the claims of husband and wife are reciprocal as the guiding principle of family life then we must accept monogamy as the basis of family.

The family represents an active principle. It is never stationary but advances from a lower to a higher form as society advances from a lower to a higher condition. Naturally, it was thought that in the primitive social stage promiscuity prevailed, with unrestricted sexual freedom, every woman belonging equally to every man and every man more or less to every woman, but so far as the man and his primitive conditions are taken into account they prove nothing to this effect. If at all promiscuity existed, it belongs to such a remote epoch that it is very difficult to prove its existence directly by making a search for its traces in historical and religious survivals. "That even the simplest group would leave sexual relations unregulated is hardly conceivable; for sex besides being a cohesive and unifying force is at the same time a disruptive and explosive force which requires a certain control and regulation. The popularity of promiscuity as the initial phase in human development is partly due to the evolutionary school of thinkers who conceived of evolution as passing through a regular sequence of stages in the following order: promiscuity, group-marriage, polyandry, polygamy and monogamy. Since evolution must be from lower to higher and since they were convinced that monogamy was ethically the most perfect form, promiscuity was postulated as the beginning stage."

From this primitive state of promiscuous intercourse there developed the consanguine family where the marriage groups are separated according to generations: all the grand-fathers and grand-mothers within the limits of the family are all husbands and wives of one another: so are also their

Family in the beginning of its origin

Later developments

children, the fathers and mothers ; the latter's children will form a third circle of common husbands and wives ; and their children, the great-grand-children of the first group will form the fourth. It will be observed that in this state the relationship between brothers and sisters even includes sexual intercourse with one another. Even though such a typical form of family life is extinct to-day, it must have existed.

If in this first advance in organization the parents and children were excluded from sexual intercourse, in the second stage the brother and sister were excluded.

Group marriages Even though an important advance, its acceptance as a universal law was more difficult than the first. Gradually it was made a general rule ending with prohibition of marriages even between collateral brothers and sisters. Out of this originated the new form of family life, the Punaluan family, where the husbands were regarded as punalua, that is, intimate companions or partners. The essential feature of this classic family was "mutually common possession of husbands and wives within a definite family circle, from which, however, the brothers of the wives, first own and later also collateral and conversely also the sisters of the husbands were excluded". This naturally can be regarded as an underform of group marriage and in all such forms of group family the descent can only be proved on the mother's side and that, therefore, only the female line is recognised.

Even in this form of group marriage we can find traces of certain amount of pairing. This customary instinct of pairings were bound to grow more stable with the increasing complications of prohibition on marriages and were bound to be displaced by the pairing family—where one man lives with one woman but their relationship is such that polygamy and infidelity remain the rights of man whereas strict fidelity is demanded of a woman.

Origin of monogamous family

Thus the history of the family in primitive times consists in the progressive narrowing of the circle, originally embracing the whole tribe, within which the two sexes have a common conjugal relation.

Monogamous family develops out of the pairing family. "It is based on the supremacy of the man, the express purpose being to produce children of undisputed paternity; such paternity is demanded because these children are later to come into their father's property as the heirs of his body." In it there is a greater strength of the marriage tie, which cannot be dissolved at either partner's wish. This form, however, cannot be regarded as the result and fruit of individual sex love. Marriages remained, as before, marriages of convenience. On the other hand, it was based on economic conditions—on the victory of private property over primitive, natural and communal property. Naturally, monogamous marriages do not come as a reconciliation of man and woman. "It is the cellular form of civilised society in which the nature of the oppositions and contradictions fully active in that society can be already studied."

This traditional patriarchal monogamy is now fast undergoing a change. Divorces have been made more easier, there is a great prevalence of sexual freedom outside of the family and many of the functions of family are now taken over by other agencies. Some of the most sacred ideals of the older family life and sexual morality are, regarded to-day with much light-heartedness the foundations of the traditional family seem to be gradually undermined.

2. UNSTABLE FAMILY

Moreover, the economic developments associated with modern industrialism and the growth of secular outlook have done much in bringing about the downfall of the old rural family. The family has no longer been the centre of economic life. We purchase what we want in the market, produced not in families but in factories. The remunerative employment channels afforded to women have created in them a feeling of self-assertiveness and independence. The rise of the cities has had a most demoralising effect upon the family of older days. Family has no longer remained a place of peace and happiness, pleasure and recreation. That congenial atmos-

phere is gone and family today has become a home of discontented and disappointed souls.

Family today no longer performs those useful functions and does not bear its former responsibilities. Children are not nursed up and brought up in family traditions and customs, but are left under expert care at public expense. The educational functions of the family have been taken over by public schools and kindergartens. The matrimonial relations are on the breaking point because of the increasing tendency of dodging the responsibility of child-bearing. "The social radicalism promoted by modern industrialism has developed a philosophy antagonistic to the conventional family."

The family, moreover, has lost its religious sanction which in a way promoted the intellectual and moral foundations of traditional family. "Probably the most important influence of secularism upon the modern family is the divorce of sex from sin."

Causes of instability

Anything good or bad done in relation to sex is not taken to mean anything good or bad done in relation to supernatural power, but sex relations today are judged by what they contribute to human welfare. "It is quite possible that the growth of secularism may ultimately lead to a family system in accord with scientific facts and social realities than the old-time monogamy."

The transitional phase through which the home and family are passing is not unrelated to the increase of divorce, desertion, juvenile crime and drunkenness and other evidences of social demoralization. It will thus be noted that the rise of factory system, the entry of women into industry, the progress of universal education, the appearance of the single standard for sexes, the impact of the automobile upon the social life and habits have all played their part and contributed their respective share in bringing about the instability of marriage and revolution of home.

Even with all these changes going on family still remains a powerful social institution. "It is our parents that first cure us of our natural wildness and break in us the spirit of Independence we are all born with. It is to them that we owe

the first rudiments of our submission and to the honour and deference which children pay to parents, all societies are obliged for the principle of human obedience." The family plays, moreover, a very important role in regulating sexual relationships and providing for the affectional needs of its members ; it makes possible the prolonged care which children require ; it makes possible the transmission of a cultural heritage ; and finally it remains in our societies especially a powerful agent for social and economic differentiation.

3. FAMILY AS A FUNCTIONING UNIT IN THE PAST, PRESENT AND FUTURE

Even in the days of primitive culture when a crude sort of family organisation was there, the members of the family individually and collectively performed certain important functions. The husband in those days was a hunter, the wife prepared food and the women and children helped to gather vegetables, to dig roots or pick berries. Several of these family groups served the functions of an independent economic unit and foraged together keeping generally out of one another's way.

**Primitive
Family—an
independent
economic
group**

But under the plough and cattle culture the earliest form of family and its later development into consanguineous family disappeared. The role of husband now became more important and the conjugal family was best for the development of household economy. Even though during the hunting cultures and horticultural period, family was a successful economic unit, the standard of living was low. With the advent of plough and domestication of cattle the families became largely self-supporting and better off consuming their own produce, developing various handicrafts and buying the deficit commodities only. The family naturally became an important centre of business enterprise and in case the female member was industrious, thrifty and a good manager she assumed the position of a business partner.

**Family
becomes
a social
enterprise**

One important fact should be observed in this connection. The family, besides being an economic unit, was the centre of

many kinds of activities, social, educational, recreational and religious. The home ranked as a very important institution.

With the development of means and methods of communication and transport and advance made by science in every field of human activity, as observed above, **Family today** family lost all its former glory and importance. The factory, instead of the family, became the unit of production. Not only the change has deprived the family of its economic functions but it has invaded the other fields also. The family today has undergone a considerable reduction in size due to the fact that family in the form of marital pair and collectivity needs no help of the members for the performance of various functions formerly attached to it and especially due to the development of peculiar sex psychology. The outside agencies have taken over the educational, religious, recreational and protective functions. However this drastic change is only with reference to urban family but the rural family also is fast coming within the clutches of the new socio-economic order and in the very immediate future it may be completely transformed.

4. CAUSES OF THE INSTABILITY OF MONOGAMOUS FAMILY RELATIONS AND CONSEQUENT DIVORCE

One of the fundamental causes for the instability and downfall of monogamous marriage is the ease of marriage.

Ease of marriages

“Marriages which are entered into as a result of a weakened flair for adventure or during a period of intoxication are not likely to be more successful or enduring.” Moreover marriages are entered into without the least knowledge on the part of the persons involved and when once involved and trapped in embarrassing situations one loses the courage to be candid. Especially women give such a faint impression of consent of which they have no intention and find consequently committed to the eternal bonds of marriage. Economic causes also force the pace of instability. Wife is dissatisfied with her husband because of his inability to provide enough income for even necessities. Husband gets disgusted with his wife when his ideas of a neat and happy home are shattered to pieces. No one recognises his or her fault and blames each other which

results into quarrels, sense of discouragement and futility and an unwholesome atmosphere in the home. Sexual ignorance and incompatibility often lead to marital discord." Of all the factors that contribute to happy marriages the sex factor is by far the most important. Successful lovers weather storms that would crush frail semi-Platonic unions."

Where family feeling is extremely weak, there is a frequency of divorce; where family feeling is strong divorce will be comparatively rare. "Divorce is a symptom of deeper social trends, which have undermined the moral and economic bases of the monogamous family. Adultery, cruelty and desertion may not be more prevalent today than sixty years ago. It is possible that the lessening of the social taboos and the general easing up of conventions have given many couples the courage to come out into the open and end their incompatibility by legal divorce. Moreover divorce has also been made easier and cheaper."

**Divorces are
made easy
Today**

The growth of industry and the increase of wealth have broken that social and consequently family cohesion and all classes have been infatuated by the desire to live on an ever-rising scale. This has not only led to the creation of the spirit of individualism and disappointed ambitions but has its repercussions upon the family. This gives the psychological explanation for increased divorce.

The economic independence of women has destroyed that tolerant give-and-take attitude and even though it has not given to them a passport or licence, it has instilled in them the feeling of self-assertiveness. This has a demoralizing effect upon the monogamous family and stable marriage. "Since industrialization has been undermining the home for many years, we now have a generation of undomesticated children who, in turn, when they marry are prone to form unstable unions."

**Demand for
economic
independence
by women**

Moreover strict standards of sexual morality give another cause for the increase of divorce. Sexual fidelity is regarded as the most indispensable factor in successful marital relationship. Infidelity therefore on the part of any member concerned is viewed upon as an immoral act and the aggrieved

partner in consideration of the feeling of pride and decency requires a divorce action.

There are, however, rational solutions for the deplorable instability of marriage and consequent popularity for the system of divorce. "Marriages should be made more difficult and only compassionate marriage of youth should be permitted to be initiated without prolonged reflection." Moreover unless and until the provision is made for able-bodied and energetic persons to earn a satisfactory and respectable livelihood, when misery and impoverishment could be successfully combated with and children will be cared for in the midst of economic security and adequacy it is not possible to offer a satisfactory solution of the problem. Marriages can be made stable and eternal if the couple is given realistic sex education with respect to the facts and responsibilities of marriage relationship before marriage. "Much more should be accomplished in the way of improving the attractiveness and novelty of monogamous situation."

5. WHERE LIES THE SOLUTION TO THE PROBLEM

Family today is at the basis of our social structure—a factor upon whose superiority depends the future prosperity and advance of the entire social organisation.

**Monogamy
should be
made popular**

It is an institution which provides for the development of human personality in its manifold aspects by creating a congenial atmosphere. Whatever may be the history of family in the past and the attitude of State towards it, there is an increasing tendency among modern States to recognise only permanent monogamous relations. Family is regarded as a complex of rights, and the rules and regulations covering and moderating family are not of morality but of rights. Thus that marriage should only be lawful with one wife, that it should be for life, that it should be terminable by the infidelity of either husband or wife are rules of right, not of morality. Naturally State regards polygamy as an offence because it means a violation of the rights of those men who are excluded from regular marriage and the moral education which results from it a violation of the rights of wife who is morally lowered by exclusion from her proper position in the household, and a

violation of the rights of children who lose the chance of that free moral training which depends on the conjoint actions of father and mother.

Mere sexual impulse is not the basis of family life and it never is the true basis of the conception of good which is common to husband, wife and children. The duty of the State therefore is to recognise the monogamous marriages only from the point of view of the well-being of children, of public morality and of social solidarity.

The State also should make adequate provisions for divorce on the grounds of infidelity of either husband or wife because that the wife should be bound indissolubly by the marriage tie to an unfaithful husband is a violation of the right of wife or husband as the case may be. It is really unjustifiable and unwarranted from the point of view of both. However, in case of infidelity, if an injured party is willing to condone a breach of his or her right, it is best that the State should keep its hands off because the moral education of children demands that family life should not be disrupted and disorganised as far as possible. The ground for securing to individuals, in respect of the marriage tie, certain powers as rights is that in a general way they are necessary to the possibility of a morally good life. The more completely marriage is a *consortium omnis vitae* in the sense of unity in all interests and for the whole of lifetime the more likely are the external conditions of a moral life to be fulfilled in regard both to married persons and their children. Therefore the general rule of the State in dealing with marriage should be to secure such powers as are favourable and withhold such as are not favourable to the *consortium omnis vitae*.

Forms of Marriages.

POLYGAMY.

Monogamy that enjoins the marriage of one male and one female is practised more largely than any other arrangement and where wives are bought or where they are not of much economic value after marriage most men cannot afford to have a number of wives, but if monogamy is the most widely practised form,

Polygamy

the most widely favoured especially among the more wealthy section of population is polygamy or polygyny which is the marriage of one man to several women. Even at present we see polygyny persisting in the *sub-rosa* and non-institutionalised mode of expression, namely in the frequent tendency of the rich male to support besides an institutionalised wife and family, one or more mistresses.

Various factors have tended to encourage polygyny. It is not that the excess of females over males facilitated polygyny.

**Factors
encouraging
polygyny**

No such condition was necessary for the prevalence of the system. Culture may distort what would seem to be a rational biological arrangement and sexual ardor, adventure-someness, the desire for display and prestige, and the zeal for novelty on the part of man can be given as psychological motivations for polygyny. Moreover, the stronger in the community may not have the respect for the rights of the weaker and in case of war and conflict it was quite natural for the victorious to appropriate a number of conquered and helpless women. "Political and military considerations have also been operative. Polygyny made it possible for the males of the ruling class to beget many more children than would have been possible under a monogamous system. Polygyny was also frequently conferred as a reward for military valour and strategic prowess. Religion often rationalised and approved the prevailing practice of polygyny among the ruling class of society whom the priests desired to placate and favour, in return for support of the prevailing cult."

POLYANDRY

Much more rare than polygyny is polyandry which means the marriage of one woman to several men, who may or may not be brothers. "This plan is found among the Todas of Southern India, where it takes either the fraternal or the non-fraternal form. In the first case, a group of brothers share a wife; in the second, the wife makes the rounds of the different settlements where her husbands live, spending a certain length of time with each. In the paternal variety, if a child is born all the brothers may share the title of father, and the child will address them all by that name. In the other arrangement

some one husband will, by an established ceremony be chosen as the child's legal father. It is interesting to note that while biological paternity is not emphasized, legal, social paternity is."

The system of polyandry runs counter to the fundamental human tendency to covet exclusive possession of the mate. In the community, mentioned above there is prevalent female infanticide, which naturally leads to the excess of males over females and this reason makes polyandry understandable but the chief factors responsible for polyandry are extreme poverty of the people and the small economic utility of women in the culture. It is also argued that it best serves the sex needs of man in a region where nature is extremely unproductive and the resources of the community do not permit universal monogamy.

EXOLOGY AND ENDOLOGY

Among some people there is a prescription that they must marry outside their groups, a practice known as exogamy—a system which seems to be quite understandable and compatible with the prescription against incest which exists in every culture.

Exogamy

In some cases the marriage of mother and son is universally prohibited and same is true of the union of father and daughter. No doubt in ancient Egypt and Peru, brothers and sisters have been required to marry but the main reason for it was the belief that they were divine and desired to keep the blood pure.

Endogamy which prescribes marriage within a particular group may exist side by side with exogamy, "as may be seen in the United States today in the case of State laws which forbid marriage of first cousins (exogamy) yet require marriage with someone of the same race (endogamy)."

Unhappiness in marriages and its causes.

It is said that the more civilised people seem less capable of lifelong happiness with one partner. The causes are not far to be found. When we regard marriage as an association of male and female, sex must be an important relation in marriage. If the divorce cases are

Psychological factor

scrutinized, it will be seen that just prior to the breaking up of marriage sex difficulties between mates are always present. If there is a failure in the sex aspect of marriage, this failure is more due to psychological and cultural factors that impinge on sex and disturb its operation. Naturally, personality can be regarded as the most crucial single factor in marital relations and it affects happiness in marriage.

Terman says that happily married women are characterised by kindly attitudes towards others and by the expectation of kindly attitudes in return. They do not easily take offence and are not unduly concerned about the impressions they make upon others. They do not look upon social relationships as rivalry situations. In religion, morals and politics they tend to be conservative and conventional.

Happily married men show evidence of an even and stable emotional nature and their most characteristic reaction to others is that of co-operation. In a gathering of people they tend to be unself-conscious.

On the other hand, unhappily married women are characterised by emotional tenseness and sudden change of moods. They give evidence of deep-seated inferiority feeling and are inclined to be irritable and dictatorial. They are egocentric and like activities that are fraught with opportunities for romance.

Unhappy husbands are inclined to be moody and somewhat neurotic. They are prone to feelings of social inferiority, are sporadic and irregular in their habits of work. They more often express irreligious attitudes and are more inclined to radicalism in sex morals and politics.

These traits which make or mar happiness in marriages exist in some degree in individuals before marriage and personality is already formed at the time the marriage is contracted.

The most essential condition therefore which makes for happiness in marriage is as little differentiation as between men and men and between women and women; where such a differentiation exists, the partners become dissatisfied with their choice because of the feeling that they have secured less than what they might have obtained.

Moreover, in a society where there is a paucity of un-owned women and absence of social occasions when married

men meet respectable women the partners will be happy and will make most of the situation. If there is fixity of social customs, if marriage is taken to mean a sacred contract, final and irrevocable, it will be a great asset in preventing unhappy marriages.

A Happy Family

Clearly, a good home is that which produces well-adjusted children. The more close and affectionate the relationship of the child with his parents, the less the chances of conflict between parent and child and more the child shares confidences with them. Naturally, a good family environment is that which provides for children an emotionally satisfying relationship with parents based on affection and protection.

That does not mean there should be over-affection and over-protection. That would produce "spoiled child" if association with other children does not provide a corrective. A well-balanced atmosphere creates a balanced child, with the marks of family personality and environments.

It is not only affection that shapes the personality of child but praise and blame are equally important instruments. In no case extremes should be sought but children should be tendered steady, moderate discipline. The discipline should not be harsh but sharp. Poor parental discipline would result in poor adolescent adjustment. Moderate discipline would infuse in the minds of children social values.

To sum up, the criteria of good family environment are—little parental criticism ; absence of nervousness in both parents ; frequent confidences between parents and children ; some physical expression of affection and common family activities.

Future of the Family

When we try to consider the future of family and also the prediction that family as a social institution is destined to disappear, the fact that attracts our attention is that it is not the family as a whole but certain aspects of family life—the rural patriarchal family and indissoluble monogamy—whose existence is threatened by contemporary developments. As a matter of

**Immediate
future
tendencies in
family**

fact there are more marriages and therefore more temporary families than ever before in human history. What is disintegrating is the old type of family that came down to us from the pastoral and agricultural age and indeed "if divorce becomes easier it is likely that many persons will be encouraged to contract matrimony and may be so entranced therewith as to be induced to continue the arrangement indefinitely" which emphasizes the fact that family would perpetuate and thrive. So it is not the question of the disappearance of family at some future date that is important but the question of practical concern is the immediate future tendencies in family life. The changing economic circumstances, the alterations in our cultural and social set up have not in the least affected the biological function of women even if they may have influenced family life by giving far more importance to mother and lessening the importance of father. Moreover social workers have pointed out that keeping the mother and child together is a far more important matter than keeping the father present in family.

Moreover it is quite easy to see that State has taken over many of the father's responsibilities and services which maintained cohesiveness and solidarity in the family group. It is already providing education and is performing many purely domestic functions through public health agencies, nursing associations, child guidance clinics and recreational centres. Such changes will have definite and marked effect upon the future of family, and if civilization survives the present crisis, family in its modified form is bound to exist and marriage readjusted in terms of social rationality will continue to be popular. Reason and affection will predominate over supernaturalism, ignorance and dogmatism in keeping and maintaining family ties. Family life will be readjusted to scientific facts and consideration of social welfare and thorough-going sexual education, the sanction and encouragement of compassionate marriages, imposition of greater restrictions and responsibilities upon easy divorce legislation and the provision of economic conditions which will bestow upon the family the material foundations for an enduring and successful matrimonial arrangement, will be the guiding principles in future reconstruction and readjustment.

**Family—an
altered social
Institution**

Congenial family atmosphere is conducive to the mental and physical development of the child. Children feel safer in the affectionate world of parents and are not afraid of the dangerous world with which they boldly experiment and explore. Children often feel helpless and it is the parental bond that keeps them warm, happy, fearless and enlivens their spirit.

Virtues of family life

Family today is more a concern of legal enactment because marriage today is regulated by law. State is making an increasing intervention in family affairs because parents may be irresponsible or they cannot be relied upon to take as much care of children as is deemed necessary by the community. Moreover consideration of poverty makes intervention of the State an absolute necessity but the fact is clear that through the agency of schools the control of State over children is gradually extending and being strengthened.

Family and State

The family today is taken to mean a product of legal enactment and the family rights are regulated by the executive authority of the state. It may be that the parents may be incompetent or they cannot afford to live up to the ideals in maintaining and bringing up their children. Their labour may be exploited for the economic purpose of the family. State therefore prevents the employment of children in factories and does not allow the life of the child to drain by a slow agency of toil.

Why state intervenes—causes

Moreover the introduction by the State of universal, compulsory and in some cases free education for children involves a thorough and drastic change and interference with the parental functions. The life of the children is not impressed and their personalities are not developed only under the care of parents, it is in the schools as well that by providing education of uniform pattern the control of State gradually extends over their lives. They are at times provided with all the material requisites of life and sufficient care is taken by the authorities to keep the children mentally and physically fit and it is said that "one of the few rights remaining to parents in the wage-earning class is that of superstition that may be

shared by a large number of parents in the same neighbourhood."

This process of extension and substitution of state authority for the functions which the father performed originally has no limits. To such process the upper classes are an exception, except in those countries where socialism is practised vigorously. The exclusion of the rich and wealthy section will be creating different outlooks among the rich and poor. But that in no way makes the interference of State with regard to the children of the poor illegal and unconstitutional. It is against public sentiment and humanitarian ideals to allow the human waste to continue and such state activities will always be in opposition to the views of the limited section and even at the sacrifice of the cultural interest of that class. However it is clear that such state activities instead of being curtailed will gradually expand in future, the rich trying hard to maintain their old family groups by remaining in cultural isolation and the poor looking more and more to the state to take over and successfully perform the economic and educational functions.

Another force, and that is the growing desire of women for economic independence, is contributing its greatest share to the advancement in this direction. If the claims of women are recognised, because they are equally education-conscious as men are, and such a number is not in a minority, it will have profound effects upon family. It would practically mean handing over the children to nursery school and thereby eliminating the role of mother as well as of father in the moulding of child psychology.

However the substitution of state for the father has immensely improved the health of the community and the general level of education. "It has diminished cruelty to children. It may be expected to continue to raise the general level of physical health and intellectual attainment especially by preventing the worst evils resulting from the family system where it goes wrong." The growth of social organisations and agencies designed to supplement functions formerly assumed by family has paralleled the loosening of family ties and the

decay of family responsibility on the heels of industrialisation and the desirable future situation seems to be better family control over those responsibilities which can best be executed by family and a more complete development of those policies and agencies which are needed to supplement family activities in our complex societies.

The system of state control over the former family function has also some dangers implied in it. The affection that the parents have towards their children is not mixed up with ulterior motives generally, and parents usually do not intend the satisfaction of their wishes by exploiting the mental and physical capacities of their children. But the state is not expected to have such an attitude because the men who are to bring in

Dangers in substituting state for parental functions

execution the laws passed by the state and who actually come into contact with the children will no doubt cultivate the same feelings and mentality that parents possess. But they are helpless creatures, mechanical instruments in the hands of powerful executive officials and administrators who regard men not as end in themselves but a material out of which something is to be constructed and carved out for the fulfilment of some one else's end. Therefore, the discretion and refined touch of the parents' treatment would be wanting here.

Moreover, what society wants is not the creation of uniform and homogeneous machines but sane and respectable citizens fully conscious of their responsibility. The children in the family are brought up in an atmosphere that raises their intellectual potentiality to the best possible ends. Their aptitudes and curiosities are satisfied and answered by those who know what the child exactly wants. In the institutions of state uniformity is the law as guiding principle. Children handed over to the mercy of institutions will therefore tend to be treated all alike, while the few who cannot conform to the recognised pattern will suffer persecution, not only from their fellows, but from the authorities. This means that many of those who have great potentialities will be harried and tortured until their spirit is shaken. It means that the vast majority who succeed in conforming, will become very sure of themselves, very prone to prosecution and

very capable of listening patiently to any new idea. 'Above all so long as the world remains divided into competing militaristic states, the substitution of public bodies for parents in education means an intensification of what is called patriotism i.e., a willingness to indulge in mutual extermination without a moment's hesitation, whenever the Government feels so inclined.'

Joint Family System in India

Joint family system is one of the most characteristic features of Indian society. It stands in marked contrast with the Western countries which is composed of a man, his wife and his minor children. The **Essentials of a Joint Family** joint family in India may have even three generations, with several collaterals, widowed daughters, nieces, aunts. Its affairs are managed by the eldest male member of the family who performs religious ceremonies for the family and is the custodian of the property of the family. He is supposed to preserve family traditions and maintain prestige. The earnings of all the members are collected in a joint-stock so that there is common purse and joint family is thus joint in food, worship and estate. The pursuance of the principle that everyone is to earn according to his ability and in return to get according to his necessity makes joint family system very akin to socialist principles. It is thus a socio-economic organisation especially meant to secure the social welfare and economic benefits of the large family groups, which constitute the basic factor in the social organisation.

Besides the factors of kinship, religion and social traditions the economic conditions of life, lack of communication, absence of the spirit of individualism and special employment facilities greatly helped to preserve the solidarity and unity in the joint family.

The joint family goes a long way in implementing the ideas of reverence, obedience, co-operation, discipline, self-sacrifice in the minds of individual members so that it makes possible for a considerable number of people to live together and to work together. To everyone is assured a minimum

Benefits of the system

for existence without taking into least consideration his ability and strength to earn. Orphan children are not turned out of the home to suffer the miserable pangs of the world but are cared for ; and moreover by affording a safe and respectable asylum to widows for whom there is no course left in life and also to unemployed, sick, aged, infirm who are made to fit in the household economy and assigned work according to their ability. It may be looked upon as putting into practice the noblest ideas of social insurance. The advantages of economic division of labour are best secured and large economies in expenditure are obtained due to absence of unnecessary duplication of household equipment and establishment.

But the altered circumstances of the economic world today have brought into limelight the grave defects of the system.

The disadvantages of the system

It puts a premium upon the desire to work because human nature demands that it should reap the whole fruit of one's labour. In the joint family there is no co-relation between effort and reward. Moreover the idea that if a man works hard he is not much better off and if he does not work at all he is not much worse off increases the amount of laziness and individual member becomes irresponsible, without a sense of self-respect, enterprise and initiative. This subordination of the individual to the group life never allows one to develop his or her own personality and individuality, incidentally the very qualities are mostly needed in the complex economic organisation of today. Moreover as the joint family is composed of men, women and children with diverse tastes, habits and in whom there is no similarity regarding age and general outlook, it is absolutely impossible for the head to have a perfect adjustment and understanding regarding the family affairs. There are bound to be temperamental clashes amongst the members due to inherent jealousies, and peace and harmony are far away from family life due to diversification and dissimilarity not only with regard to age but ideas also between the younger generation and the aged. As the head of the family has the responsibility of looking after the welfare of such a large number of people, it keeps him away from the rightful and bold acceptance of enterprises so essential for economic progress. Moreover the incomes of the individual being spread over the entire family, there are less

chances for the accumulation of capital and development of large-scale enterprises. Joint family system today is giving way to the forces which are actually brought to bear upon it. The development of transport facilities and large-scale industries are giving encouragement to the individual members to leave the fold of joint family and boldly accept the challenge of new circumstances to build up his own career and carve his future. With the decline of old family occupations, growth of the spirit of individualism, intensification of the struggle for existence, it is growing increasingly difficult to maintain joint family as a socio-economic unit and where it still prevails there is not the same domestic bliss and contentment. It is gradually losing its strength and vitality. While we are

Future of the Joint Family looking to the disintegration of joint family system which may be looked upon as a change for better it does not mean that we should prefer perverted individualism "which is entirely self-centred and feels no call of conscience to stretch out the hand of helpfulness to the weak and the needy among one's relations. The problem is to steer clear of the complete suppression of individuality on the one hand and on the other of the complete suppression of the spirit of mutual sympathy and helpfulness. The need for self-sacrifice will always remain but self-sacrifice ought to be voluntary instead of obligatory."

CHAPTER IV

STATE

1. Introductory

From the very beginning of his existence man has lived under some form of organization and authority. To Aristotle man was by nature a political being, so State has its roots in the natural impulses and instincts of man. It grows and develops, it is permanent, and reappears when destroyed. There is no such thing as right to ignore State because we are born in State, having our being in State and we cannot disown and claim dissociation from it. Moreover State is absolutely necessary for the development and growth of human personality. The State comes into existence originally in the bare needs of life and continues to exist for the sake of good life.

Essentials of State. The essential elements of State are .(1) population which includes both the rulers and the ruled. As the constituent participants in the framing of constitution, the people are citizens and in the capacity of those who obey they are the subjects. No limit can be placed upon the number but it

can be said that it should not be so great as to overrun the area as well as resources and should be sufficiently numerous to maintain a State organization and to distinguish between public and private affairs, between those who govern and those who are governed. (2) Territory, the possession of which is a fundamental basis for modern States. "Territorial sovereignty or the superiority of the State over all within its boundaries and complete freedom from all external control, has been a fundamental principle of the modern State life." (3) Government--the existence of a population inhabiting within fixed territorial units or geographical boundaries is not enough to make a state. Some sort of organization which will express the will and execute it is necessary. Government is the machinery including all the persons taking part in the expres-

sion as well as the administration of the will of State—the sum total of all the legislative, executive and judicial bodies in the central and local organs—or affecting the sovereign power of the State. “State cannot exist without a Government and Government exists only as the organization of State. Government is thus the existing adjustment between the State and its individuals and the means by which inter-state relations are maintained” and lastly (4) Sovereignty, which means supremacy of will and power over the individuals and associations of individuals within the State and immunity from external control. There is no authority beyond. Compulsory obedience and not voluntary submission to the law of the State, is the rule. Therefore, not only organization but unity, which means that the territory and population constituting the composite State are immune from control of any external or wider political organization and State cannot claim any territory or population not subjected to it politically which is the essence of sovereignty, is essential. It is this essential element of State that coercive power which distinguishes State from all other associations.

All these essential characteristics must exist in combination and absence of one negates the very existence of State.

Meaning of State.

“State is not the people, not the land, not the Government but all of them and in addition the State must possess that unity which makes it a distinct and independent political entity. A State therefore is a community of persons permanently occupying a definite territory, legally independent of external control and possessing an organized Government which creates and administers law over all persons and groups within its jurisdiction.”

Society and State are not identical concepts. Society is the complex of organised associations and institutions within a community whereas State is a political

State and Society.

organization occupying a foremost place amongst all associations that constitute society and authorised to control and co-ordinate the multitude of social relationships and brings order out of disorder, peace out of confusion. To the Greeks State and society were identical. The city-States were small in size and

compact in population. Every citizen knew every other and actively participated in the making and working of the Government. They were bound by common social relationships and interests. Naturally political life exhausted the social life of the people there. "She is ours and we are hers" was the characteristic attitude of Greeks towards their city or State. The city performed multifarious functions, it was the State, the church and the school all in one. The social life was a life of citizenship.

Such identification under present circumstances cannot be justified. State is society politically organized. Society is

Points of difference. broader in scope than State, society consists of a variety of organizations which develop human personality and gives expression to the wills and emotions of men which lie far

beyond the jurisdiction of the State. Man is greater than citizen, his membership of the political organization and the consequent obligation do not exhaust the whole of his being. It is in this sense that society is wider in scope than State. "It transcends the individual state and crosses state boundaries without regard to their existence." Moreover membership of State is compulsory and State laws are more binding, organised and rigid. There is ample scope for mutual adjustments within society, and society functions not as a rigid organisation coercing obedience from its members but voluntary co-operation is the basic foundation of society. It persuades, not demands. There is no legal backing behind social laws which are questions of personal adjustments but only moral force whereas State is fully legally empowered to inflict any penalty on those who commit a breach of law. Society exercises its authority only through customs. "The area of society is voluntary co-operation, its energy that of goodwill, its method that of elasticity; while the area of State is rather that of mechanical action, its energy force, its method rigidity." "State is a structure not social and coextensive with society but built within it as a determinate order for the attainment of specific ends." Society is held together by the State and if it were not thus held together it could not exist.

Government is the instrument or living tool, a practical organization through which the will of the State is formulated,

State and Government.

expressed and realised. The purpose of the State is the realisation of the greatest good of the greatest number whose life is controlled by State. This objective is fulfilled through the agency and instrumentality of Government mechanism. State is permanent, fixed and largely an abstraction, but Government is concrete and liable to change in the form. Moreover, "State is the whole of which Government is a part" State embraces the entire mass of population whereas Government in the strict sense of the term comprises only of legislature, judiciary and executive personnel. The individuals have rights against Government but that would mean exercising these rights against themselves. State is the fountain of power and lie it may in the domain of abstractness, it is none the less real and effective, its authority being felt conceived every now and then.

If by State we mean a political organisation by nation we mean self-governing nationality. Nation equals State plus nationality which is a cultural and ethnical term and factors like geographical unity, common racial stock, common culture, common language, religion, customs and traditions.

State and Nation.

common history, common economic interests and political associations, common hope and aspirations constitute nationality. "Nation therefore stands for the unity of people organised in one state and acting spontaneously as a unit." It is only here that State and nation coincide and we get a nation State. "But whenever there are people belonging to many nationalities residing in one State or when a single nationality spreads over several States the State and nation do not coincide."

From the foregoing discussion it is clear that the superiority of State as the highest form of human association can be established beyond doubt. The life of

Importance of State.

man is incomplete without the State and it is necessary for the self-development and self-realization of the individual. "Only in the State does the individual really become a man." If the end of State and end of the life of man is one and the same State becomes in other words individual's own will and mind." It

is the extension and completion of the moral and rational will of the individual." On the other hand State can also become his body and force. In the use of force to coerce the recalcitrant will in society, State is interpreting the will of the individual to himself. Moreover, State is the association of associations. "The State cannot be composed of groups because no groups, nor any number of groups, can contain the whole of 'me' and the ideal State demands the whole of 'me'." This exhibits the uniqueness of State. As a natural corollary it follows that State adjusts the outstanding external relationships of man in society. Without it there will be chaos in society. State creates unity and fosters solidarity in society. It is in this sense that it is the adjuster of social relationships.

2. Theories of State Origin

(i) *The Force Theory*

The force theory advocates that State came into being as a result of superior physical force, the subjugation of the weak to the strong. In primitive societies a man who was in possession of exceptional physical strength was able to exercise some kind of authority over his fellow men. This is equally true of superior tribes and clans in their relation to other tribes and clans. So according to this theory it is war that creates State. Some exponents of the theory use the term force broadly so as to include forces derived from intellectual and religious factors. The theory therefore tries to explain the origin of State as well as a rational justification of the State to exist.

But to regard State as a mere outcome of force and human aggression is a clear mistake. Force is no doubt the factor that led to the evolution of State but it is not the only factor. The state must have grown as much out of conciliation and agreement as out of force and conquest. "Might without right can at best be only temporary, might with right is a permanent basis for the State." The theory debars the inclusion of such essential elements as co-operation, peace, mutual understanding which in fact have contributed to the making of State. However if we regard force as moral force, the theory stands above criticism. Moreover the theory advocates

the doctrine of the survival of the fittest. So if by fittest we mean morally fittest the theory again stands above dispute. The theory clearly emphasizes the value of force as a necessity to maintain internal order and security and externally to repel aggression.

(ii) *Theory of Divine Origin*

According to the theory of divine origin, State was the creation of God or some superhuman power who ruled the State thus established directly or indirectly through some ruler regarded as the agent of God. The theory is universally found among early people who supposed that the king was in direct communion with God. The theory was revived to support the theory of Divine Right of Kings in the 16th and 17th century when the king was supposed to have derived his authority directly from God and therefore was considered above the law, subject to God and his conscience alone. Accordingly it was the king who makes laws, laws did not make kings. The supporter of the theory first used it as a bulwark against the audacious claims of the church and later on it was advocated against the growing political consciousness of people.

The theory has no supporters to-day and is rejected on various grounds. State is taken to be a human institution and of an historical growth. Laws are human in origin and enforced by them. "To say that God selects this man or that man as ruler is contrary to experience and commonsense." Again, the rise of social contract theory, with the emphasis it gave to consent, the rise of supremacy of the temporal as distinct from the spiritual power or, in other words, the separation of the church and the State and the actual refutation of the absolutism which the theory supported by the growth of the Democracy, finally resulted in the decline of the theory. Moreover it is unscientific and cannot be proved by ordinary rules of reasoning.

However, in the semi-civilized condition of man it proved a powerful factor in preserving law and order. "Its supreme value lies in the fact that it indirectly emphasizes the moral liberty of the political order. It emphasizes the fact that Government is for the good of the governed."

(iii) *The Social Contract Theory*

According to the social contract theory, the State is necessarily an outcome of a deliberate and voluntary agreement entered into by primitive men emerging from a state of nature when there was no state, no political law except the law of nature which "was either too idyllic to last long or too inconvenient and unbearable." This resulted in the establishment of a political society, and with the abandonment of the state of nature the primitive men had to lose their natural liberty partially or wholly but in return they secured protection, order and peace, social as well as political.

State—an artificial creation

Hobbes, Locke and Rousseau are the greatest exponents of the theory and the state of nature as well as the contract has been interpreted by them in various ways.

Hobbes presents a very sadistic view of the state of nature where life is one of constant warfare due to the selfish motives of man. "Every man is enemy to every man." In his own words, the life of man is "solitary, poor, nasty, brutish and short". Moreover desire for pleasure leads to desire for power which is very difficult of acquisition due to the fact that all men are alike so that men stand in natural fear of each other. It results into ever erring presence of warring mentality and actions. There can be therefore no morality and consciousness of obligation. This was the time when people met together and set up a Government, when the State of nature became intolerable. The contract is not between people on the one hand and sovereign on the other, it is a contract amongst people themselves to establish a ruler. It is as if every man should say to every man: "I authorise and give up my right of governing myself to this man or this assembly of men on condition that thou give up thy right to him and authorise all his action in like manner." Sovereign is not a party to the contract. He is absolute. Once the powers are submitted to him, they cannot be withdrawn which means people have no right to revolt. To Hobbes there is no difference between State and Government and the contract which sets up a civil society also established a government. "It is the setting up of a sovereign that creates society." The

Hobbes's exposition

objective of Hobbes was to justify royal absolutism. Sovereign is the supreme law-maker and cannot do any injustice to the people as he represents them. Overthrowing the Government means anarchy.

Hobbes made a mistake in identifying the will of the State with the will of the *de facto* sovereign. Moreover political theory tends to recognise political sovereignty or the will of people behind the legal sovereignty. Hobbes' theory guarantees no rights to individual who is placed at the mercy of the rulers.

Locke's exposition To Locke, the state of nature is a state of peace, goodwill, mutual assistance and preservation. People are obeying the inward law of morality but in order to curb the activities of a rebellious section which causes inconvenience by its presence, people take law in their own hands. This is, however, against human nature which likes to be left free and moreover men are not good judges in their own cases. The only defect with the state of nature is the absence of a recognised system of law. People remedy this defect by entering into a civil society by a contract against themselves and then set up a government organisation by a contract between people in their corporate capacity on the one hand and the ruler on the other so that dissolution of the government does not mean disappearance of civil society. Moreover people submit only certain of their rights to a common authority, the ruler, and failure on the part of the ruler to observe these obligations justifies the people in overthrowing him. Sovereignty is therefore never absolute but limited by the reserve sovereign power of the people. If Hobbes thinks that the duty of Government is to maintain order and security, Locke not only recognizes the importance of it but also emphasizes that it should govern well. "Locke recognizes the force of political sovereignty but does not give adequate recognition to political sovereignty."

Rousseau's exposition Rousseau pictures man in the nature of an equal, self-sufficient and contented being living the life of idyllic happiness and primitive simplicity where equality reigned and happiness was universal. With the advance of civilisation inequality creeps in and is further augmented by the institution of

private property. This leads to the establishment of civil society. What man loses by the social contract is his natural liberty and an unlimited right to all which attracts him and which he can obtain ; what he gains is civil liberty and the property of what he possesses. The contract is between individuals in their personal capacity on the one hand and individuals in their corporate capacity on the other. "Each of us puts his person and all his power in common under the supreme direction of the general will, and in our corporate capacity we receive each member as an indivisible part of the whole." So that no one is the loser but everybody is a gainer. In the theory of Rousseau we have the "foundations of popular sovereignty and Democratic Government." Each one has a share in the sovereign power of the State and each one is a subject as he pays obedience to the laws which as sovereign he himself has made. This indivisible, absolute sovereignty Rousseau locates in the body politic as a whole. "The business of Government is only executive. The essence of legislation is will and will in its very nature cannot be transferred or represented. Thus Rousseau combines the best elements in the theories of Locke and Hobbes. "It was Rousseau above all who first made positive Democracy a live doctrine in the world of politics."

We find no place given to this theory in the annals of human history which never mentions that at some time in the past, human beings established a civil society and government by entering into a contract when the state of nature in which they were living became unbearable. Moreover establishment of such a contract presupposes a sound political knowledge, a high degree of intelligence and critical attitude—circumstances, far from reality in the ignorant and savage state of nature.

State is the people politically organised, a permanent and enduring association concerned with the past, present and

Criticism of the theory

future of the group and both are natural and necessary. Associations and organisations can be the natural outcome of human wills and emotions but they also have their own persons. They grow. The theory assumes state as an artificial creation, whereas state is natural. The theory is an artificial and mechanical explanation of the origin of civil society.

The assumptions of the theorists, particularly those of Rousseau and Locke, that men enjoyed rights and liberties in the state of nature is illogical. Rights exists **Men enjoyed no rights in the state of Nature** only in a society politically organised or in a social organisation having legal sanction. Law and liberty go together. We cannot conceive of liberty unless there is some legal institution to preserve and protect it. Liberty can only be a licence in a state of nature where might supersedes right.

Whenever a contract takes place, it presupposes the existence of some legal authority or popular will behind it for the strict enforcement of the contract to maintain its sanctity. Whereas the theory makes no reference to a system of law—a precondition for the successful operation of the contract.

The history of human evolution stresses the fact that the movement of human society has been once from status to contract. Group life was the essential characteristic of primitive societies. The theory wrongly assumes that individuals passed from separate existence to corporate existence for safety, security and order and society has moved from contract to status. "Even as a rational attempt to explain the nature of state and source of governing authority the theory is faulty. A contract is a voluntary relation which individuals may enter into or not as they choose. The relation of the individual to the state however is not a voluntary one, since man is born into the State and cannot avoid its obligation or withdraw from its control. The social contract theory tends to reduce the state to the level of a joint stock company—an artificial creation rather than the product of historical growth and of social necessity."

(iv) *The Historical or The Evolutionary Theory*

The historical or evolutionary theory furnishes a correct explanation of the origin of the State. According to this theory State is the product of history, a result of gradual evolution. **State—a product of history** "It is the gradual realization of the universal principles of human nature," and the gradual and continuous development of human society out of a grossly imperfect beginning, through crude but improving forms of mani-

festations towards a perfect and universal organization of mankind." State is therefore not a deliberate and conscious creation of mankind and as single event led to the formation of State. "Like other social institutions, the State arose from many sources and under various conditions and it emerged almost imperceptibly." The most important forces that have contributed to the origin of State are kinship, religion and political consciousness.

Kinship Kinship or blood relationship which can be regarded as the earliest bond of union was at the basis of family which can be regarded as the oldest form of human associations. Within the family group was bred the system of rule and subordination to

the elder or patriarch and the kinship maintained solidarity and unity amongst the members of the family. It cannot be said that this idea of rule and subordination directly lead to the formation of State but with the multiplication of families tribes or clans are formed ; the tribes further expand into society. "Kinship creates society and society at length creates the State." However, importance of kinship as a unifying and cementing force cannot be minimised or negatived.

With the process of expansion and continuous mixing up of the tribes the bond of kinship could no longer be traced.

Religion Seniority in age and kinship fell short in justifying the right of an individual to rule.

Naturally in the absence of an unifying force, the tendency of disintegration might have been augmented but for the force supplied by religion which took the form of ancestor worship. "Ancestor worship and common worship thus welded together families and tribes which were on the verge of disintegration on account of the slackening of the ties of kinship." The system of rule of obedience established by kinship was continued with the backing of religion and the eldest members were supposed to be fittest persons to rule being taken to be in direct communion with the departed ancestor whose wrath and displeasure would befall anyone who would disobey the council of elders. Naturally the former patriarch became the ruler with religious sanction and established order and maintained unity. "Religious and political ideas were little differentiated and obedience to law and authority rested

largely on the belief in the divine power of the ruler and in the sacredness of immemorial institutions."

As civilization advanced religion as an unifying factor was replaced by the political consciousness which implies the existence of certain ends to be achieved through political organisation. People no longer submitted blindly to the king who forced obedience by an appeal to the consequences of disobedience. Blind submission was substituted by intelligent obedience. People understood the necessity of order and peace for social security and accepted the system of rule and subordination voluntarily and consciously. This element of political consciousness was no doubt present in a crude form in early human society but it was either bypassed or neglected or it was not in a recognised form. We could see the growth and development of this element when society became finally politically organized, shaping the destinies and future of mankind.

The value and importance of the evolutionary theory lies in the fact that it contributes the best elements of all other theories. The divine element is discernible when we speak of the impulse or instinct leading to association. The element of force is there as we see that no organization can live without the final authority to force or compel. The element of contract or agreement comes in when we speak of political consciousness as a dominant factor; moreover it is based on historical proofs and facts.

3. Justification and End of the State

The full and free development of man is impossible in isolation and some sort of organisation is necessary for the attainment of this end. Does this justify the existence of the State? The answer is affirmative. No doubt morality is self-earned but what the State does by regulating human conduct by compulsion, if necessary, is not destruction of moral forms but creation of good circumstances in order that individuals should live a good life. Moreover,

liberty is not the greatest of all political goods ; liberty in the absence of authority would lead to political anarchy. Human beings are far from noble. True human life originates and prospers only in political society. Experience has taught us that corporate action achieves much better results than the efforts of an isolated individual could achieve, and we in modern days perforce, organise for promotion of pleasure, of art, science, literature, religion and to secure peace and order with the aid of force. State is the most important and most comprehensive of all such organisations and therefore, most inevitable.

If the existence of State is justified what is the purpose for which the State exists ? Aristotle believed that it is not

Purpose of the State

a mere society having a common place, established for the prevention of crime and for the sake of exchange. It is a community of well-being in families and aggregations of families for the sake of a perfect and self-sufficing life. State exists for the sake of good life—the means are family connections, brotherhoods, common sacrifices and those who contribute most to such a society have the greatest claim to power. “However, with the beginning of liberal era, it was realised that State belonged to people and theories developed regarding the end of State. It is said that the end of State is the promotion of the greatest good of the greatest number. It was also argued that individuals should be left free to work out their own salvation and State should afford internal peace and order and external security. Some say that the end of State is progress and State exists to promote certain social services, which have to do primarily with the social interests of the community. Some are also of the opinion that the end of State is justice—an order of life in which human personality and its ideals can be realized.”

However, the important question is whether the State is an end in itself or a means to an end. The consensus of opinion today is that State is both an end and means.

State is both an end and means

If we look at the nature of State from the individualistic point of view it is only a means, an instrumentality or an expedient through which the highest possible develop-

ment of humanity is secured. But if the State is considered as an institution distinct and apart from the citizens who compose it, it is, of course, an end in itself. It is a means to an end because it looks after the well-being of citizens and also an end in itself because the hands of State reach far beyond the well-being of any particular group of individuals or any one generation. However, the 'present craze for a 'Welfare State' has brought about a total change in the entire outlook of man and the question of State as an end in itself or a means to an end has well-nigh lost its former importance. And in this all too war-torn world the emphasis has shifted from 'State' to 'Welfare'.

The proximate aim of the State will be, therefore, development of National power as against individual or group power within the State. The secondary aim is the attainment of individual liberty and promotion of general welfare by maintaining peace and order and by helping and educating its subjects and the ultimate end will be perfecting of humanity or advancement of world civilization.

If State is thus understood as a means to an end as well as an end in itself, what is the proper sphere of State action? State as a supreme political organisation is capable of exercising its sovereign power to the fullest possible extent, but changing political conditions and tendencies have introduced a corresponding change in the nature of functions the State should perform and the question is also decided on the merit of advantages.

4. Functions of the State

(i) *Individualistic View*

The individualist theory tries to reduce the function of State to the minimum and starts to advocate that over himself, over his own body and mind the individual is sovereign. According to them State is a necessary evil begotten by aggression and of aggression. Necessary because of the criminal and caprice-dominated nature of man; evil because State regulation always means encro-

**Minimum
control and
maximum
liberty**

achment upon individual freedom and liberty. From the point of individual, maximum exercise of sovereign power by State is tantamount to minimum possible enjoyment of liberty by individual and minimum possible exercise of sovereign powers on the part of State is equivalent to maximum enjoyment of liberty and freedom by individual. This being the case the functions of the State should be limited and restricted to the protection of the individual against external enemies, the protection of the individual against internal enemies, and the enforcement of the contracts lawfully made. State should behave as a policeman restraining individual excesses, standing, seeing, watching but never suggesting or directing. Individuals are to be left free to take their own course of action without any restriction imposed by State.

In support of the theory it is argued that human personality develops in all its manifold aspects if he is left free to think, feel and act without his conduct or behaviour being hampered and restricted. **Power restricts the scope of manhood** State regulation checks and to some extent even retards the full growth of manhood. Moreover human initiative develops best and sense of responsibility and self-reliance inculcates in the mind of individual, as he has to depend upon his own strength and capacity for progress and prosperity. It is only those who can survive in the struggle and competition are fit to live. Naturally individualism is in keeping with the theory of evolution.

But the very basic assumption of individualism that State is an evil is open to severe attack. State instead of being an evil in itself has done much in contributing to the advancement of human welfare and civilisation. The state emancipates and promotes as well as restrains. **State is not an evil** "State might have committed mistakes in the past, but to condemn State on this ground will be similar to condemning it always as an evil because their operation sometimes leads to accident." Moreover the social and political life is getting so complex and bitter day by day that there is today a greater need for State regulation which would never mean curtailment of individual liberty because liberty has life in it only in cautious and well-

guarded atmosphere. Further, strict accordance to the theory of individualism is believing too much in the capacities of the individual. For the vast multitudes of masses are not at all the best judges of their interest and the state is at any step deemed necessary for the moral, intellectual and physical development of man. Unrestricted freedom would not lead to a society of equivalents but would lead to anarchy because "self-interest never took a man nor country to any other end than damnation."

To sum up we can say that individualism emphasizes self-reliance, combats needless Government interference, urges the value of individual in society but it exaggerates the evils of State control when it forgets that there are more instances of good State action than of bad. It gives a fundamentally false conception of individuality and finally it has proved quite unfitted for the complexity of modern life.

(ii) *Socialistic View*

On acute contradictory and opposite grounds is raised the superstructure of socialism. Instead of minimum possible State action it starts with the hypothesis that maximum possible state control and regulation are absolutely essential for individual good and welfare. To the Socialist, state is a positive good being a "guide, philosopher and friend of the citizens from cradle to grave." In its extreme form it visualizes a "co-operative commonwealth controlling all the means of production and regulating distribution according to some method of joint control," and thus offers to provide a remedy to the evil consequences of unrestricted competition. It is the only way by which social justice can be made possible for the bulk of mankind. Even if socialism would not lead to society of equals, socialist society will definitely not be of unequals because socialistic ideals place a much-needed emphasis on altruism and on the cultivation of a desire for social usefulness and for the love of activity for its own sake. Socialism becomes the economic complement of Democracy.

As an ideal socialism with its doctrine of collective ownership and management is beyond comparison and it would lead a long way in curing the evils of present capitalist system but there are tremendous difficulties in the execution and administration of those ideals. It is argued that not only it will encumber the Government machinery which will be overpressed but it will break down under its own weight though the socialist is ever-optimistic in the matter of Government management. The nation may materially suffer in the sense that in the absence of competition the multifarious activities in the nation may not run on the most economic lines possible and due to restrictions and limitation on individual liberty and freedom human virtues might not develop and human personality might get no opportunities to manifest itself. This would lead to standardization of human values and a very limited all-round progress would be possible. "Each member of the community as an individual would be a slave of the community as a whole."

Both individualism and socialism imply an universal element of truth, but we don't want either in the extreme form: what we want is a social structure which will preserve individual liberty without harming the organic unity of society. If we could imagine an ideal at once individualistic and socialistic, such would be the effective ideal for most thinking men. The individual is right in aiming at the variety of individuals and, as is the socialist, in impressing on all their common interest; for the fullest development of each is to be found in the performance of his function in the life of the whole.

(iii) *Real view regarding the functions of the State*

Whatever may be the theories regarding the philosophic basis of State the question as to what functions the State should perform is of immediate and practical importance. On one point there is a unanimity of opinion that it is the duty of the State to create and promote conditions for self-realization on the part of all. Changing circumstances and

environment may have affected the application of this principle because what might have seemed advisable and reasonable as a function of state before hundred years may not be so today but the principle remains the same

The functions of the state are usually classified into (1) essential, constituent or necessary and which result from the very nature of the state and (2) optional, ministrant or non-essential which may or may not be considered desirable.

The first group of functions is determined by three-fold relations of State to State, of State to individual and of individual to individual. For the performance of these functions, army, navy and vast police forces are required to be maintained which necessitate raising of large quantities of money and exercise of wide and extensive powers. The objective is to maintain internal peace, security and order, protect the life, liberty and property of the citizen and maintain the solidarity of State as a State against external attacks and thus ensure external security.

Essential functions

The police force should be used not only to detect and prevent crime but it should form a bulwark against encroachment upon the cultural, religious and social rights of the citizens. In thus punishing the culprits and miscreants the duty of the State does not exhaust. Not the punishment of the crime but removal of the criminal mentality should be the objective of State and in so doing it should try to improve the miscreants by starting reformatory schools and also should try to remove the root of criminal mentality which lies deep in our social and economic structure. In the development of individual and national genius and power lies the end of the State. But modern conditions are such that the nations cannot live in isolation. At some time or other they have to come together. That should not be for the destruction of humanity but for promotion of international peace and order and advancement of human civilization. On the international side the attitude of each and every State counts much weight. Forces should be maintained but not for aggression and imperialistic expansion but as a measure of security against warring nations and in order to defeat aggressive

Defence versus Aggression

tendencies, Defence should be both national—maintenance of peace and order internally—and international—promotion of international peace and order.

Education which is necessary for all, comes first in this category. Education not only universal, free and compulsory but education in all its aspects—primary, secondary and technical. It is upon the system of education that good citizenship depends. By co-operating with other private institutions the State should provide libraries, museums, research institutes and art galleries which would go a long way in elevating the moral, intellectual and cultural level of citizens.

Next to education comes the tremendous task of maintaining and promoting public health. The State should launch a public health campaign directly by providing education, decent standard of life, establishment of dispensaries, hospitals, nursing homes and asylums and indirectly by draining the marshy places, by disposing of rubbish and sewage, by providing pure water, by promoting cleanliness all round which will prevent the spreading of disease. In order to be successful State should recruit and conscript all the resources at the disposal of the community.

But the task of the State does not exhaust here, it must also look after the material advancement of the individual citizens as well as of the whole nation. It should assume control of the entire economic life of the people. Almost all the States are running today services like post, telegraph currency and exchange which are of economic character but States should try to regulate the private economic life of individuals by rationing food, milk, sugar and other necessary articles and by supplying water, gas and electricity to the citizens at fixed rates. It should regulate the public economic life of citizens by passing laws which will prohibit employment of women and children in certain industries, regulate conditions and hours of work, prescribe minimum wage and old age pensions. It should provide insurances against sickness, accident etc. Moreover with the help of swift and efficient means of transport and communication like railways,

shipping, aeroplanes, radio and wireless, which have in them great educational possibilities, it should try to bring the life of citizens all over the State as close as possible.

It can be said that legislation is the essential function of the State. There are various occasions in the life of society

Social legislation

when a change in the social structure is deemed essential but no one is there to take the lead because individuals dare not come forward in fear of social scorn and rebuke. State should take the leadership in such cases and fight against the conservatism and orthodoxism of society and pass reforms relating to marriage, divorce, backward classes, women and their property rights which would never mean restriction upon the free life of citizens but would be equivalent to preserving conditions of liberty.

However, we may enumerate the essential and non-essential functions of the State. We cannot overlook the important fact that all these tasks are of colossal magnitude to be launched on large scale. Their performance would require a keen insight and wide forecast, systematic and careful planning of policy, and efficient and intelligent administration on the part of the statesmen. They would not be successful unless and until citizens as the constituent elements of State are ready to co-operate whole-heartedly with the State, guiding its policies whenever occasion arises.

Co-operation of the citizens

5. Sovereignty—A Detailed Analysis

It is the possession of sovereignty that distinguishes State from all other organisations. When society is politically organised and when a Government is established to create and enforce laws, State comes into being. Within this group there is supremacy of will and power resting with some persons or body of persons whose commands are treated as laws and who therefore exercise sovereignty legally. Even though this does not mean the negation of all other organisations and associations, the fact cannot be ignored that the will of the State overrides all other wills. That individuals are enjoying certain rights and liberties and that their asso-

Meaning of sovereignty

ciations and institutions have certain privileges, carry no legal force against the State which if at all it puts certain limitations upon the exercise of its sovereign power, are all self-imposed limitations. This sovereignty is therefore both internal and external—internal in the sense that State is supreme over the life, liberty and property of the citizens, external in the sense that it is immune from any foreign dominations and control and is resting upon either force or consent or a combination of both. It is this possession of force to support its commands and to compel obedience that distinguishes the State from all other associations and that makes it sovereign.

This sovereign power of the State is absolute because there is no legal limit to the supreme law-making power and no other legal power superior to the State within its boundaries is universal and comprehensive because under its jurisdiction come every person and every association of persons in the State. It is permanent because it exists so long as the State continues. The personnel of the State may change, the State may be reorganised on revolutionary basis but sovereignty remains wherever located. It is only by destroying State that we can put an end to this fundamental characteristic of State ; it is also indivisible because "there can be but one sovereignty in a State. To divide sovereignty is to destroy it. The exercise of its powers may be distributed among various government organs but sovereignty is a unit just as State is a unit. A divided sovereignty is a contradiction in terms."

This doctrine of absolute and undivided sovereignty had been recently attacked by pluralists who deny that State alone is sovereign and all other associations and organisations of the citizens must submit to the supreme will of the State. They look upon the State as merely one association among many with limited jurisdiction and power. The pluralist do not want to destroy State but deprive it of sovereignty. The State is not superior or inferior to other essential associations in society which look after the various interests of men and try to develop that particular aspect of the human personality with which they are concerned. The supreme importance of

Sovereignty and Pluralism

such association must be recognised and they must be given an equivalent status by dividing sovereignty into fragments and distributing it among State and other associations. "Powers should become co-ordinate instead of being hierarchical, and authority should become federal."

The pluralistic theory is a timely protest against the rigid and dogmatic legalism associated with the theory of sovereignty. The pluralists prick the bubble of the present State's right to supremacy. They recognise the value of the group and see that the variety of our group life today has a significance which must be immediately reckoned within political method. They plead for revivification of local life and see that the interest of the State is not always identical with the interest of its parts.

Moreover pluralist argument will be important in the attack on the external sovereignty of State for those who are lovers of international peace and order. If formerly international law had only the backing of public opinion, the present tendency is towards making it a reality providing it with a system of sanction so that the lives of the State, just as the lives of citizens, will be bound by some common law which affects the destinies of humanity and which the progress of human civilization and advance in science have left beyond the control of individual sovereign States. Logically States should be internally sovereign but externally some limitations should be placed upon the exercise of sovereign power and if establishment of international peace in order to stop the destruction of human culture and civilization is the noblest ideal and objective, this will be the least amount of sacrifice the States will be called for to do in the enhancement of that noble cause. The sufferings of humanity are same everywhere and a citizen instead of being a loyal member of a single political organisation will be a member of humanity. "The notion of an independent sovereign State is on the international side fatal to the well being of humanity. In a World State, however it be built, whatever the measure of decentralization that obtains, there is no room for separate sovereignty."

In spite of the powerful exposition of the fallacies of absolute sovereignty, we cannot accept political pluralism because to divide sovereignty is to destroy it. If co-ordination and adjustment of social and political relations is to be satisfactorily carried out, State should have legal supremacy and should not tolerate the existence of any organisation hostile to social welfare. The social relationships are so complex, that clash of interest and conflict of loyalties is bound to occur and the existence of the authoritative voice of State is deemed absolutely essential. Moreover omnipotence of State is not at all claimed by the supporters of undivided sovereignty ; they agree that the State sovereignty has moral and rational limitations. "The State is not represented to be irresponsible, only it is not responsible to any other authority similar to itself." Moreover, State is all-inclusive and above all an association rightly using force and seeking the universal and particular interests of the members. It alone can bring order out of chaos and conflict of loyalties. "My citizenship is something bigger than my membership in the vocational group. We want the whole man in politics." If the object of the pluralist is to give as much autonomy as possible to various permanent groups in society, it nowhere leads us to abandon the doctrine of State sovereignty and "as the conflicts between the State and permanent groups are adjusted and the State gradually gives legal recognition to the new forces in social life, pluralism will disappear.

CHAPTER V

CLASSIFICATION AND FORMS OF GOVERNMENT

(i) *Aristotelian and Modern Classification*

Technically, classification of States is impossible because all States are similar in their nature, in their legal character and in their primary purpose and contain the essential elements of population, territory, Government and Sovereignty. State as such is abstract but the essential characteristic of the State is its political and legal nature, which is manifested in its Governmental organization. This Governmental organization differs with every State. Naturally, the classification best suited for the purpose is

Classification of Governments and not of the States

based upon similarities and differences of Governmental forms. This classification of Governments will eventually mean, therefore, classification of States.

Aristotle by using the criterion of numbers and the principle of the location of sovereignty within the States, classified the Governments into Monarchy as a form of Government in which sovereignty was located in one person ; Aristocracy, a form of Government in which sovereignty resided in a small minority ; and Polity as a form of Government in which sovereignty was bestowed upon a large proportion of population. However, being not satisfied with the classification on numerical basis he coupled with it the criterion of Norm and classified Governments into Normal, meaning those in which rulers ruled in the interest of community, and Perverted, meaning those in which rulers ruled in their own interest. Combining these two criteria of number and Norm, he gave six forms of Government. Monarchy, rule of one but perverted into tyranny when the ruler exercises his authority arbitrarily and despotically ; Aristocracy, a rule of few perverted into oligarchy when the rich section of the community by using their powers and privileges trampled upon the interest of the common people ; and Polity, Government of the many perverted into Democracy, an acknowledged madness or mob rule.

The classification, however, is no longer applicable today and is objectionable from many points of view. When we esteem Democracy as the best and highest form of Government, Aristotelian classification viewed Democracy as a perverted form. The basis for classification is more of a quantitative and numerical nature. Moreover modern Governments largely follow a mixed principle "combining in them Monarchical, Aristocratic and Democratic elements.

Modern Governments are, therefore, classified (1) according to the number of persons who share in exercising the sovereign power of the State into monarchic, aristocratic and democratic, (2) according to the principle of separation of powers into Cabinet and Presidential types, (3) according

to the principle of division of powers into Unitary and Federal and lastly, (4) Dictatorial and Totalitarian. It must be said that monarchies are the things of the past and where they still prevail, they are limited and constitutional. The Monarch reigns but does not rule. Pure aristocracies also in the Aristotelian sense of the term nowhere exist.

(ii) *Monarchy*

Monarchy usually is a form of Government in which the head of the State derives his office hereditarily but the actual powers of Government are exercised by others

Advantages of Monarchy

who regard the monarch as a nominal head, and monarchy fades into aristocracy or democracy. Monarchy exists so long as the personal wish of the monarch is constantly felt and is effective. Monarchy in this absolute sense nowhere exists today, because the powers of the monarch are limited constitutionally due to the rise and growth of public opinion. Monarchies have been upheld because of their simplicity of organization, promptness in action and constancy and continuity in policy. Unity and strength are secured in administration due to powers being concentrated in one hand. Party politics for control of power are avoided. The monarch being above all classes and conflicts impartial justice is secured for all. The value of hereditary monarch as a nominal head is significant in continuing historical tradition, and a capable but wise monarch may be useful in serving as a bond of unity, a focus of national pride and patriotism.

But there is no guarantee that heredity will turn out a capable person every time to become a king, and experience has shown that whenever power is concentrated

Disadvantages

in the hands of a single person, he is bound to be a despot, governing not for the greatest good of the greatest number but to secure his personal interests, without paying any heed to the law. Moreover civilized and intelligent people will resent even a wise and efficient monarch because of their exclusion from public affairs, interests and policies which affect their social being and hence do not allow development of their personality.

(iii) *Aristocracy*

In aristocracy political power is placed in the hands of a small minority of population by virtue of their wealth, birth, education, age, prestige etc. It was considered that thereby government is carried on by the most competent and talented men of the community and many even believed in the doctrine of natural aristocracy of ability and character and were of the opinion that it should be given every opportunity to rise to political power. As a matter of fact in every Government the masses of population are either ignorant or disinterested in political affairs and do not participate in the actual working of the Government and powers come to be vested in the hands of a comparatively few people who dominate and influence the public. In this sense it is difficult to draw a line of demarcation between Democracy and Aristocracy "but the theory of Aristocracy has no confidence in the political ability of the masses and believes in Government by the selected few."

The defenders of Aristocracy claim that being based on the principle of quality rather than quantity in the location of power Aristocratic Government is most competent and efficient. It is rated as a midway and moderate form of Government between tyrannical monarchy on the one hand and unrestrained and passionate mob rule on the other. A tradition of experience, public service and responsibility develop to make Government respect authority and avoid rash experiments. Moreover men of ability and initiative get every chance to express their skill. Naturally Aristocratic Government is more stable and able to maintain a constant and vigorous policy both at home and abroad.

"The weakness of Aristocracy lies in the difficulty of fixing a sound and just principle for the selection of group or class that is to exercise political power."

Weaknesses There is no guarantee that the group will not misuse the power at their disposal to further their own interests and augment tyrannical tendencies. Moreover Aristocracy tends to be a class by itself, develops arrogance and pride and proves a hindrance to the progress

by becoming too exclusive and conservative. The days of benevolent aristocracy are gone.

(iv) *Presidential form of Government*

Working of the Government Under the Presidential form of Government the supreme executive authority is concentrated in the hands of a single man who is constitutionally independent of any legislative control regarding his tenure of office and State policies he adopts except in certain cases when the executive could be removed, impeached or vetoed by the Legislature. The President, as he is popularly known, elected by the people for a term of years, chooses the members of his cabinet from the political party to which he belongs. The members are not on co-ordinate and equivalent level with him but are subordinate to him and responsible not to the Legislature but to the President who is the executive head. They may not even belong to the party in majority in the Legislature. Naturally any vote of censure or no-confidence against the Executive has no legal force. Due to this important and peculiar position of the Executive, the legislative programme is not officially prepared and placed before the Legislature for approval. The Executive and the Legislature enjoy same status, neither having power to control the other.

Merits As the Executive works for a fixed period, the Presidential form of Government is more stable and yields valuable and useful service especially in times of national emergencies or war. As legislative deliberations have no effect upon the policies of the Executive and as Executive authority is concentrated in the hands of a single person, there is more vigorous and energetic pursuance of policies and programmes, definite and continuous, unhampered by changes due to legislative criticism. Moreover as the ministers are not expected to pay any allegiance to legislative demands they can fully devote their attention in outlining the policy of their respective departments. Promptness of decision and their immediate execution is only possible under this form of Government. Portfolios can be allocated to persons who are able and expert, and the greatest merit of this system is that it does away with the spirit of partisanship in the legislature because the executive

by factional and group interests. Moreover the unitary form of Government is more flexible and the entire force of Governmental machinery can be brought to bear upon the administrative and constitutional problems which never resulted in confusion because power being concentrated in a single set of authorities, there is no conflict of authority, no confusion regarding responsibility, no duplication of work and no overlapping of jurisdiction.

The main defect of the unitary Government is the absence of local self-government. Questions having local colour and significance are decided by a central authority located at a remote place thus causing unnecessary delay in decision and sacrifice of local interest. The decisions are often taken with ignorance and they do not concur with the needs and wishes of people of that locality or province. Naturally people lose interest in public affairs and local initiative and enterprise is suppressed, and a bureaucracy with iron policies develops, deciding questions with routine methods and never allowing for any adjustments. Moreover the unitary form of Government is not at all suited to States large in dimension inhabited by people with different political standards and ideals. People with a well-developed political consciousness and love of liberty resent such centralisation of powers.

As against this, in the federal form of Government the control of general interest by a central Government and the leaving of questions that differ in different sections of the country to the people of those areas for solution combine the strength that results from unity with the vitality and progress that result from variety. The people are willing to delegate large powers to an authority remotely located if they get a big share in the control of local affairs. Moreover the federal form of Government stimulates interest in political activity, enables small areas to try experiments that might be dangerous if applied to the entire country, diminishes the dangers that threaten the State composed of diverse nationalities or interests and relieves the Central Government of many burdensome functions." Naturally it is best

Advantages of the Federal form of Govt.

suited to States with vast territorial extensions or a State having population divided by racial, geographical or other considerations. The great merit of a federal Government is that it brings together States, which would otherwise never surrender their rights without complete fusion and thus allows ample scope for the development of local autonomy without, in any way, blocking the path of national spirit. At the same time it has prevented the growth of bureaucratic system and has preserved the liberty of people.

The very nature of the federal form of government implies certain inherent weaknesses. There is unnecessary duplication of authority and powers which results in delay, disputes and expenses. The overlapping jurisdiction of units due to a network of political boundaries causes much administrative inconveniences and disputes which carried to the international world may handicap and endanger the existence of federal Government. Moreover the political boundaries of the units are not the outcome of conscious decisions but are the results of historical development so that the subdivisions seldom correspond to the real political needs of the country. Due to the division of legislative functions between the Central Government and the units, there are many chances of diversity of legislation where uniformity is deemed essential. Naturally compromise or consent between the two authorities is less possible and there is always present a danger of rebellion or revolt on the part of units. Federal form of Government is therefore unsuited to those people who are disinclined to respect law and unwilling to acquiesce in frequent compromises.

8. Requisites of a Federation

Federation implies a voluntary association of autonomous States who submit their independence to merge into a powerful organization with a view to serving some common purpose. **Federation — a voluntary association.** The Central Government in the federation is a symbol of supremacy of will and power so far as the external affairs of the federation are concerned but internally the constitution demands that the units should be as independent as possible.

The principle of separation of powers is also observed in the case of the organs of the Central Government. Naturally the constitution is written and rigid enumerating the powers of the federal Government and the units. The constitution also lays down the relation between the two and the location of powers of the various bodies that carry on the administration of the country and being the ultimate will of the people makes itself liable to amendment, alteration or modification if people desire so. As federation is a voluntary union, the citizens owe a dual allegiance; they are firstly the members of the State to which they belong and secondly citizens of the federal Government.

The very nature of the federal Government demands it to be democratic in its tendencies because the constituent participants are equal and working under delegated authority and therefore responsible. To conclude, therefore, under a federal form of Government there is rigid distribution of powers amongst the Central Government and the units which are on equivalent footing so that the federal Government cannot encroach upon the sphere of the local Governments and *vice versa*. It is a process of integration because the units which come together preserve their local identity even after submitting a substantial amount of power.

As a natural corollary the constitution is supreme without which misinterpretation and misunderstanding are unavoidable. It must be amended at the sweet will of either of the two Governments. Its very nature says that it is a charter of rights.

The establishment of a Federal form of Government necessitates the creation of an independent Federal Court as an interpreter and guardian of the constitution. Complexity of modern Governments, the crude legality and over argumentative mentality of our times create dangers of ambiguity and misinterpretations. Naturally conflict of authority is inevitable. A disinterested body like the supreme court is therefore an absolute necessity to maintain stability and organic unity.

The question is not whether the federal form of Government is good or bad but whether it best suits the existing circumstances. It brings together various autonomous units without the loss of their individual identities ; therefore, something more than union or alliance is implied in the federal idea. "A federal constitution attempts to reconcile the apparently irreconcilable claims of national sovereignty and State love. It represents a combination of both unitary and federal principle. The name federal Government may be applied to any union of component members where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of mere municipal freedom."

9. Dictatorship.

Due to the failure of liberal Democracies after the first Great World War, totalitarianism or Dictatorship has been in ascendancy everywhere and is claiming jurisdiction over the entire human being. It was said by Mussolini that if the nineteenth century was an age of socialism, liberalism and democracy, the twentieth century is to be a century of authority, collectivism, fascism and the totalitarian State. Under the dictatorial regimes State is a permanent, absolute institution having a divine sanction and the motto of the people is 'all within the State, none outside the State, none against the State.' The life of the individual belongs to State, and not to him. Violence is the command of Dictator. Religion, morality and education are means to the achievement of totalitarian end and are therefore subordinate to State. Liberalism and Parliamentary Governments are described as stupid, corrupt and slow-moving. Individual liberty is crushed and there is no freedom of speech, thought and writing. Dictatorship glorifies the nation and is aggressive, imperialistic and expansionist. Patriotism is exploited to the fullest extent to serve the purpose in bringing these ideals into practice. Moreover it is based on prejudice and hatred towards all beyond the boundaries of the State.

Still we cannot blind our eyes to the fact that Dictators have been successful in creating a new confidence and sense of self-respect in the people. The tendencies of defeatism and pessimism have been banished and people have been unified and the sense of national unity and solidarity have been strengthened. The dictators are not self-interested despots. Naturally they have good popular support to back them. People lead a disciplinary life. "Totalitarianism further satisfied the craving that there is in man to follow leadership and authority as well as action."

Achievements of Dictators

Naturally one is tempted to ask the question whether Democracy will survive in the face of the tremendous obstacles the Dictators have placed in the way. It should be said that "Democracy's fundamental quarrel with such a government is not that it is a dictatorship but that it is totalitarian, not with how the government comes into being but with what the Government sets out to do." Democracy can never be rated as the best form of Government but it has never meant crushing of individual liberty and suppression of human personality, violence at home and unashamed aggression abroad ; but "in comparison with Government in the past, it has justified itself. Things may be bad today but they were worse yesterday." If we are hoping of curing the evils of Democracy by Dictatorship it means "hope by Satan to cast out Satan." In Democracy if initiative and self-reliance are respected, Dictatorship forces men to believe, to obey, to fight. If under Democracies inner conscience is the fountain that instigates and inspires action, brutalising of human nature and fear moved the people under Dictatorship." The common man in Democracy may often go wrong ; but he goes, subservient in an authoritarian rule and waits to be pushed. Dictatorship has been a transitory phase and can never be permanent substitute for Democracy which appears, disappears and reappears. If Democracy wants to survive it must conquer Dictatorship by becoming itself a living reality, invading every sphere of life, fighting intently for and holding high in honour the principles of liberty and fraternity and thereby defeat Dictatorship on its own grounds. "If there is anything better than Democracy it is yet to be discovered."

Future of Democracy

CHAPTER VI

DEMOCRACY AND ITS PROBLEMS

(i) Democracy

Democracy can be described as that form of Government in which majority of the population actually takes part in the exercise of sovereign power. *uniformity* Equality is the basis of democracy and no citizen irrespective of his wealth or poverty, caste or creed is allowed to enjoy any special political privileges. Under democracy it is the majority that rules and law conforms to the prevailing public opinion. Democracy has absolute faith in the capacity of people to govern themselves and Democracy therefore is based upon the consent of the people. It is a Government by the people, of the people and for the people

In the widest sense of the term, democracy is not merely a form of Government. It is a type of State and it stands for a definite social order, because, there the spirit of equality and fraternity prevails. **Democracy—
a way of life.** Even though the crux of Democracy is the value of personality, that does not mean that all individuals are equal or alike. "What Democracy seeks to do is to reconcile the principle or sentiment of equality with the fact of natural inequality." "Democracy in practice is the hypothesis that all men are equal which is used in order to discover who are the best." It is an attempt to reconcile the totally contradictory elements of liberty, fraternity and equality in order to enrich human personality and take it to the highest moral level possible. Thus democracy is a way of life.

Democratic form of Government guarantees that the will of all will be duly respected and honoured. The poorest shall have as much freedom to express his mind as the richest. It is not interested in any particular section of the community but it is sensitive to the wishes and sufferings of all the members. No one can complain that he has not a chance to be heard. Just as there are many outgo-

**It promotes
responsi-
bility**

ing connections from the Government to the individuals in the form of orders and regulations, there are as many incoming connections from the individuals in the form of wishes and desires. It results not only in the creation of best citizens which is a test of good Government but also in promoting the sense of responsibility of those who govern to those who are governed. The modern democracies being representative, the officials are more trustworthy, competent, efficient and responsible being elected popularly and always under the vigilant eye of the public. Naturally Democracy works efficiently and policies are framed in such a manner that a higher degree of general welfare is ensured. *general*

Mere efficiency is not enough for a Government to be good. *welf*
In addition, co-operation and working alliance is deemed essential between the efficient rulers and the ruled. *is*
Democracy achieves co-operation between the rulers and the ruled Democracy fulfils this rather difficult *is* condition. Democracy invites a layman to give his opinion regarding the solution of matters of common policies so that a sympathetic connection is established between the people and the Government. Naturally it is more likely to promote justice ; consent and not power of force becomes the basis of Government. Under Democracy it is not the individual who exists for the State but it is the State that exists for the individual. Democracy therefore has been described as the union of conscious and subconscious minds.

Moreover Democracy has an educative value. It raises and elevates the mass of the people and stimulates in them interest in the affairs of their own Government. Issues are discussed, speeches are delivered and policies are outlined and individuals are given full choice in the expression of their opinion and in the selection of their representatives. Naturally it creates a mass of people with a higher type of mentality with enlarged and enlightened minds and with a sense of public responsibility. "All Government is a method of education, but the best education is self-education, therefore the best Government is self-government which is Democracy." "Naturally Democracy serves as a training

ground for citizenship. It promotes patriotism, fosters love of country and reduces the dangers of revolution."

Democracy has more faith in discussion and deliberation rather than use of force. Moreover it bases itself upon freedom of speech, freedom of assembly and concerted action so that peace and progress go together. The danger of revolution therefore is further minimized. Government can be changed if it is not sufficiently sensitive to the public opinion.

Democracy has moral value also. It ennobles people, widens their outlook and enlarges human sympathies. "It is the best aid to self-help, initiative and the cultivation of individual responsibility." As **Moral value of Democracy** Mill puts it, "The supreme merit of Democracy lies in the fact that it promotes a better and higher form of national character than any other polity elsewhere." It is the character a policy tends to create in the citizens by whom it must be sustained. "The best Government in the long run is one that nurtures a people strong in moral fibre, in integrity, industry, self-reliance and courage." Democracy answers this description. Democracy develops an all-round man and opportunities for self-realization are easily available only under Democracy.

In actual practice, however, the noble ideals about Democracy have not been realised and Democracy has not been successful in fulfilling the high hopes entertained by its supporters.

The critics of Democracy deny that men are equal. Men are born with inequalities in intelligence and capacity and it is quality rather than quantity which should be given consideration. Democracy attaches undue importance to quantity so that special training, conscientious judgment and expert knowledge are totally neglected and Government falls into the hands of the ignorant, unfit and untrained. Government becomes a Government by crowds, turbulent mobs. The opinions of a minority even though they may be better judged and well digested are spurned by the majority.

Democracy a Government by turbulent mobs

It is also argued that Democracy leads to the oligarchy of the worst kind because Government falls into the hands of demagogues and the "boss" who become suspicious of capable and really efficient men. What is required to secure a seat or to become a leader is understanding of public psychology, compromising attitude and readiness to desert the principles, if necessary. Moreover average voters are usually disinterested and apathetic so that power easily passes into the hands of unscrupulous individuals.

Democracy means oligarchy of the worst kind

As Democratic Government is essentially a party Government the evils of party system creep in, and create separatist tendencies, partisanship and sectarianism crush independent thinking and secure mechanical uniformity and encourage hollowness and insincerity, carry the national divisions into local election and debase moral standards.

Evils of Party System

Moreover Democracy has been described as a cult of incompetence. As it rests upon the common multitude which is emotional, passionate, inconsistent and fickle minded, it tends to become a Government by amateurs and irresponsibles. There is either too much interference or no interference from the people and leaders are like school-masters elected by the pupils and liable to be punished and dismissed by them. Naturally no sound lines of policies are formulated and stability and efficiency are hampered.

Democracy is a Government by inefficient and incompetent

If by Democracy is meant Government by the people, who are these people? They are definitely not the unruly and unorganised majority of voters. If we accept the fact that Government is carried on according to prevailing public opinion what guarantee is there to ensure that the public opinion is right? "The voice of the people may very well be the voice of the devil."

Again Democracy has been described as the most expensive form of Government. Organisation of public opinion, propaganda through press and platform and election campaigns involve tremendous expenditure which not only indicate waste of money but of valuable time and opportunity.

Democracy is most expensive

Propaganda means falsification, convenient conversion of truth into lies, vulgarization of issues, bribery and corruption. There is no dispassionate discussion, no regard for truth or cause of justice. The only consideration is to win popular support to come into power. Parties flatter people and people are unnecessarily made to think highly of themselves. It means lowering of standards, creation of a false sense of equality. Naturally Democracy far from being a process of education is a process of diseducation. The civilization which Democracy produces is said to be banal, mediocre and dull.

Moreover in order to maintain popularity and secure his seat every representative thinks of placing something of his own on the statute book. He is crazy for legislation. Naturally Democracy results in the creation of a large and increasing mass of hasty and ill-digested legislation.

Hasty Legislation

Democracy, therefore, "insures neither better Government nor greater liberty", is "indifferent if not hostile to the growth of art, literature and science", is not "favourable to intellectual progress and the advance of scientific truth" and is a "Government by the poorest, the most ignorant, the most incapable, who are necessarily the most numerous."

All these criticisms no doubt contain elements of truth. But if Democracy is a bad form of Government what is the alternative? The world conditions are not as yet ripe to inaugurate the society sketched by philosophical anarchists, nor Dictatorship can be favoured being in opposition to the development of human personality which is the end and destiny of man. The answer as to what type of Government proves a good alternative to Democracy is negative. Moreover Democracy is progress of all, through all, under the leadership of the best and wisest. It is neither a cult of incompetence nor an irresponsible government, nor a government by amateurs but it avowedly abounds in men of ability, merit and distinction. "Democracy makes room for and includes a sound aristocracy." Further it is not the people who are to be blamed but it is the social structure wherein prestige attached to wealth, power and rank plays an important role that is responsible for making people what

Superiority of Democracy

they are. People do not always make a wrong choice. The complexity of problems presented to the people at one and the same time makes it impossible for them to give a sound and intelligent opinion. They are interested in their own Government and spare no opportunity for criticizing it.

Moreover, parties are inevitable for the successful working of Democracy. They evolve a cosmos out of chaos. They create and mould public opinion. Parties keep a nation's mind alive and party discipline puts a check on self-seeking and corruption. The defects in Democracy are gradually dwindling with the spread of education and if other forms of government do not allow for a change Democracy at least leaves ample scope for improvement. Regarding the charge of bribery, corruption and extravagance the other forms of Government are not absolutely free from these evils and education of public opinion will go a long way in overcoming it.

Today Democracy is under revision. People are not so hopeful of Democracy and their attitude is one of caution if not of criticism. Democracy is not considered as the panacea for all evils ; it is no longer considered that the extension of franchise to the largest possible number of men and women is synonymous with civil and political liberty. In the multitude of voices we do not necessarily find wisdom. However the progress of Democracy seems irresistible because it is the most uniform, the most ancient and the most permanent tendency which is to be found in history. "Democracy will come into its own for Democracy is a name for a life of free and enriching communion."

The evils of democracy can therefore be cured by people themselves, not by putting an end to democracy but by proper education, widened outlook and experienced judgment. What is necessary is a sound moral standard and honesty of purpose. People must be imbued with the sense of justice and must have a spirit of proud integrity, determination to be self-sufficient and a delicate sense of humour.

Moreover they must be on a high intellectual level which would make people reasonable and would never degenerate into mob rule and anarchy. The people must also have a strong sense of solidarity, an intense conviction of unity, a pervasive feeling of communal life. The success of Democracy moreover depends upon sound public opinion, a sensitive social conscience and effective general will. "The duration of any form of Government depends upon how far it develops a people qualified to carry it on and how successfully it brings to the front those most fit to lead. Does Democracy tend to produce a people disposed to place the general welfare above sectional interest, a people with keen sympathy and absence of jealousy between classes, with the will to bear present ills for future good, with foresight and fortitude and does select for its representatives and magistrates men who possess these qualities in a high degree? If it does these things, the squalls that arise will not disturb its foundations and it will stand unshaken though storms may rage in other lands. So long as it does not do this, the iron of its feet is mixed with miry clay."

(ii) *Electorate*

It is said that the strength and stability of modern States are largely due to the introduction of democratic measures like granting of civil and political liberty which reduce the danger of dissatisfaction and revolution to the largest possible extent. If all citizens are treated on the same grounds of equality, perfect democratic conditions will exist. This, however, depends upon the extent of electorate, that is, the proportion of the entire citizen body that may legally exercise governing power and the powers of the electorate which it may exercise directly or indirectly. "Hence in pure democracy the electorate would coincide with the entire citizen body and would directly exercise Governmental authority." However, it is not advisable to widen electorates beyond a certain limit and even this narrowed electorate does not exercise all governing powers. Naturally, the degree of democracy depends upon the limitations placed by Government upon the electorate, upon the powers directly exercised by the electorate and upon the relation between the electorate and the organs of the Government.

Extent of electorate

Accordingly electorate is considered as one of the organs of the Government, its powers and composition determined by constitutional law. Power to vote or suffrage becomes a political right, a function of Government, the exercise of public trust. With the growth of political consciousness and prevalence of the ideas of liberalism and Democracy, there has been a tendency to widen the electorate and almost in all States the system of universal suffrage prevails. It was argued by the supporters of universal suffrage that right to vote is a natural right. As all the people are sovereign, each one should be granted the right to vote without which Democracy would be unreal, and lose its significance. Further it was also advocated that as State problems and policies affect the entire mass of citizens, all citizens must have a right to share in the framing of State policies. Recognition of such a right would really mean "rule of the people." Moreover, the sense of justice demands that exclusion from the right of vote should be abolished and all persons should be given equal opportunity to be heard.

Universal franchise

However, the theory does not make the meaning of the term 'citizens' clear. If by citizens we mean sane, intelligent, adult and able-bodied members of the State, then it stands above question and universal suffrage means extension of suffrage to all excluding aliens, children, minors, lunatics and criminals.

As against this theory of universal suffrage with its exclusions and inclusions it is put forward by Lecky and Mill that right to vote is a privilege and a trust and only those should enjoy it who have the capacity to use it properly. Naturally, they go further and demand a proof of capacity.

Education—A test for enfranchisement

Education is proposed to be an effective test and no one should be allowed to vote unless he knows the three R's; but it can be pointed out that mere education may not enable a man to understand political questions efficiently and intelligently; an illiterate man can be intelligent and politically conscious. To emphasize upon literacy too much is to abandon the real spirit behind it. Still we cannot forget the value

of the fact that "universal education should precede universal enfranchisement."

It was also argued by the same critics that only property holders should be allowed to vote and propertyless should be excluded from franchise. This qualification, however, is fast disappearing.

Franchise for women Women were excluded from the list of voters because it was argued that women were physically unfit to perform all the duties and obligations of citizenship and grant of such a right to women would 'unsex' them, destroy the happy home and the qualities so essential to them as mothers and home makers. Family life would suffer a set-back and there will be an atmosphere of dissension. The family duties will be neglected and entire social structure will break down. Moreover, women would exercise their rights in accordance to dictates of emotion and sentiment which is their nature and not according to reason. "It was believed that women's best influence could be exerted indirectly and non-politically and that public careers for women would destroy deference and chivalry towards sex, would make them different creatures, and would be bad for the State."

As against this it was argued that sex is quite an accidental and natural phenomena which should not debar and exclude an otherwise able and fully qualified citizen from the right of suffrage. Women are as much citizens of State as men and in order to enable them to develop their personality and to make them feel their duties towards State they must be given full political rights. The right should be granted to them as a measure of defence and moreover if women are incapable to behave as political citizens in all other aspects of life they have out-numbered men and proved themselves of equal worth with men. It was also believed that "active participation of women in political affairs would have a purifying and elevating influence and would ensure better Government."

(iii) *Direct and Indirect Election*

Just as the extent of the electorate decides whether true Democracy exists or is absent, so the method and mode of election also determine its genuineness.

Meaning of Direct and Indirect Election

When the voters directly cast their votes for candidates who contest the election and when upon this choice the representatives are elected, the system of direct election prevails, so that there is an immediate contact between electors and elected. When instead of directly electing the representatives the voters first elect an intermediary body which finally selects representatives, the system of indirect election prevails and there is therefore widening of relations between the voters and the representatives.

Under Democracies usually there is universal suffrage. At the time of election, campaigns are launched by leaders of

Merits of Indirect Election

various political parties who work upon the passions of unimaginative public. These passions are bound to be reflected in the choice of voters. Indirect election by restricting the final choice to a wise and intelligent body avoids this danger. Moreover the electorate may not always be a shrewd, politically minded and intelligent mass. They may have their own views and in the election they may not be able to use a keen insight due to their paucity of knowledge regarding political problems and "popular" instead of "intelligent" personalities are chosen and elected. This possibility is negated under a system of indirect election where the better legislators are chosen by secondary voters who are educated and free from passion. They are also able to weigh the force of political situation and their selection is passionless and coolly contemplated.

The system of indirect election is open to criticism on many grounds. It is said that such a method is not in keeping

Defects of the system

with Democratic ideals and by widening the gaps and relation between electors and elected which ought to be close and immediate, it opens every possibility for the fearful conversion and perversion of the representatives elected. Moreover

a sense of apathy and indifferent attitude towards political problems develops in the minds of people who think lightly of their responsibility. "If a middleman is interposed between the voter and the object of his choice, his interest is necessarily diminished and his opportunity for political education weakened." Even granting that the limited final electors are the cream of the intelligentsia in the community, there is no safety against their immunity from corruption and partiality. They can easily be won over. If indirect election is sought to remove such dangers of party system, where a party system is thoroughly well developed, the primary voters choose that intermediary body that will select candidates of their party; so there is no question of better judgment being exercised in the final choice. The system gives a wrong twist to the argument in its favour. The voters who can exercise their right to elect an intermediary body are supposed to have and are expected to have intelligence and accurate judgment to elect a representative. "If a person is fit to choose an elector, he is fit to choose a representative."

The greatest merit of direct election is that as the voters know that their opinion will be counted and honoured in the selection of the representative it stimulates greater interest in the electorate in political problems, and they become more keen, alert, active and alive to the political developments. Although educative election campaigns are fought and voters exercise their choice

Advantages of the system of Direct election

in favour of that party whose programme and policies they prefer, the fact that their choice is final will make them study and discuss the strength of different policies. This adds to the mental development of the citizens. The electorate being spread over multitudes and millions of people there are very few chances of ill practices being widely adopted.

The success of the system, however, depends upon the intelligence and curiosity of the public which is usually ignorant, disinterested in political affairs and unsympathetic. This tendency, attitude and state of mind of the electors would influence their choice which is bound to be defective. People are carried by passionate propaganda campaigns of the party "bosses" who want

Conditions for successful operation of the system

to win the election and forget the promises they have given during the course of elections.

However, the advantages of direct election, because of their educative value, outweigh the advantages of indirect election and almost in all countries the method of direct election is adopted.

(iv) *Public opinion*

In ancient times and in historical times as well the State was viewed with reverence and as having a divine origin. But with the rise of political consciousness and spread of Democratic education, the State has been viewed as an agency to secure and safeguard the interests of the people. This change of attitude towards State was the result of the rising tide of public opinion and it is said that "an alert and intelligent public opinion is the first essential of democracy" and which as a vital agency accentuates the activities of State.

The public opinion has been criticized on the ground that it is neither public nor opinion. The prevailing opinion may be of an interested minority or may be sectarian and the entire mass of people may be indifferent, misinformed or unsympathetic towards it. Naturally in this sense the prevailing or public opinion presupposes extensive and accurate knowledge on the question under consideration and a reasoned judgment reached by deliberate thought. "What is really called public opinion is a confused, unco-ordinated mass of public opinion. Therefore the prevailing or public opinion may not really be opinion at all. Public opinion is usually formed by groups of self-interested leaders whose views are accepted by the common people who have not thoroughness of knowledge and keen insight. Often the minority by its intensity regarding a particular view may often create an impression that its opinion is the opinion of majority.

The real test of public opinion is therefore that it must be truly public and opinion. By public we do not mean majority alone. The minority which has been given a right of self-expression must be interested and willing to accept the opinion of majority and "feel bound by conviction, not by fear to

Criticism of the notion—public opinion

Test of public opinion

accept it". The term 'public' therefore includes majority as well as minority and where all the petty differences have faded into insignificance and where greatest good of the entire community has become the foundation-stone of the public opinion. Moreover, as said above, public opinion must not be "the outcome of the deference to authority, fear or external suggestion but must grow as a result of reasoned opinion". It must be of an homogeneous population, which is politically minded and intelligent, with a sense of duty behind the differences arising out of race, religion, caste or creed.

Democracy and public opinion. Under democratic conditions public opinion can safely be regarded as a connecting link between the electorate and Government and if this public opinion is intelligent and alert, it is effective in controlling and even diverting Government. Its independent formation and unobstructed expression are therefore necessary for efficient

and successful governance of the country. Modern States spend much of their time and energy to direct the political ideals of the people by developing effective means and methods of propaganda, which may result in creating an enlightened mass of people who may directly or indirectly participate in the Government.

Press One of the most important organs of influencing and promoting public opinion is the press. The press presents facts of public importance as they are, interprets and criticizes them and supplies views and opinions to the public and if this work is done impartially and trustworthily, it renders a useful social service. As every opportunity is given to public to express its own views, with the growth of literacy, the function of the press is becoming twofold – one that of expressing public opinion, the other that of moulding it. However, the power of the press over public confidence is gradually losing its grip due to its being dominated by sectional interests or wealthy persons so that the impartiality and accuracy is lost and distorted news are presented before the public with a different colour altogether. The press therefore should be free from any control from outside authority which however does not

mean absolute freedom. Moreover it should be free and honest in expressing its own views and those of others and also while criticizing the policies of Government if at all the real objective of educating the public is to be achieved.

“What is done by the press through the printed word is supplemented to-day by the spoken word by means of the new devices of the radio and talking pictures.

**Radio and
Cinevoices**

The speeches of political leaders and public men which were formerly very restricted and limited in scope are now broadcast throughout to the remotest corner of the country and listened to by millions. This method of propaganda may create a public opinion as the leaders wish and will and may be a process of real education or diseducation. The cinemas are useful in providing the public with pictures, current news items and thus prove to be an effective means in creating and organising public opinion.

The political parties also carry on immense propaganda to win the public opinion and support by issuing pamphlets and

**Political
parties**

floods of documents, campaigns, text-books and chiefly by means of platform. Platform speeches have a significant value in politically educating the masses. If press is available to literates only, the illiterate mass gets familiarised with public problems at public meetings where all questions are discussed and all shades of opinion expressed and moreover the presence of the dominating personality of the speaker may create a strong feeling which would in turn be shaped into a public opinion.

Besides political parties there are a number of associations including the educational institutions which by their propaganda or education influence public opinion

**Several other
Institutions**

and their propaganda which is available to all sections of the community, irrespective of their age and sexes, may create public opinion in its own way and thus bring about a favourable change in the policies of Government.

These means of propaganda are organised on a wide basis in times of war, to invite public opinion at home, to raise the morale of the militia, to rouse enthusiasm and hatred against the enemy and break up their morale. It is said that "the growth of modern Democracy has made public opinion important in the field of international relations as well as in internal policies."

Wars and public opinion

(v) Political Parties

Political parties are so universal today that their presence is said to be the essential condition for the successful working of Democracy. Whenever a group of people united by some common political bond, act as a political unit and aim at controlling the system of Government, a political party is formed. It is an organised group of citizens who profess to share the same political views and who by acting as a political unit, try to control the Government. Such an organised group of people by effective method and means of propaganda tries to control and direct the setting up of Government by winning public confidence. There may be divisions or disagreements on some minor issues within the party but the desire to control the Government maintains solidarity in the party system. Emotion as well as intellectual conviction create parties and maintain vitality and strength of parties. Behind these political ideologies there is always an economic interest and motive so that each party has an elaborate national programme for advancing national welfare and promoting the interest of the country as a whole. Despotic governments do not allow the presence of political parties; there may be one party "being a euphemism for the arbitrary rule of few people" or no party at all. Under Democracy there is a multiplicity of parties because some form of organisation is absolutely necessary for people to formulate and execute their will and on questions of emergencies and great issues parties are formed as people weigh their opinions and take sides. Due to changing circumstances and modes of thought party labels may not necessarily indicate the programmes for which it stands. Parties once formed perpetuate by habit and tradition and become legally or extra-legally a part of the actual Government, performing important functions.

Importance of political parties

The business of State is complex and it is very difficult for people to realise the significance of various issues and problems. Party organisations with the objective of promoting national welfare formulate unified statements of policies and out of a bewildering mass of confused matters present orderly evolution of policy. Not only this but by carrying on propaganda they create and influence public opinion and persuade the people to subordinate lesser differences. "The essential functions of parties are to educate, formulate and organise public opinion" by developing policies for the efficient working of government, a task which cannot be accomplished by isolated individuals. Parties not only formulate policies but try to make them the determinants of Government by capturing the Government through constitutional means. Every party believes in the excellence of its own policies and tries to appeal to the electorate by carrying on propaganda with the help of the press and platform. Parties contest elections which ultimately become educative election campaigns and as soon as it comes to power if it tries to fulfil its promises, it will be a rigid and faithful vindication of the ideals for which the party stands.

Parties ensure stability and strength in the Government by organising the public opinion without which the Government policies would be vague. The presence of many political parties checks the tendency towards despotism and it is in this sense that the value of opposition in Democratic government is felt. That a party has a majority in the legislature does not ensure the smoothness of the task of administration. Opposition criticizes the policies of the Government and tries to detect selfish motives and gives wide publicity to corruption. This makes the party in power mistake-conscious and eager to avoid mistakes. Tyrannical tendencies and Despotism are checked. "Minorities as the opposition parties are the most solid obstacles we have against the dangers of Caesarism."

Moreover, parties inculcate interest about public affairs in the minds of citizens and induce them to actively participate in them, educating them, and removing their inertia.

“Whenever considerable division of power exists parties serve as a unifying force which by controlling the various organs of government secure harmonious and consistent policy and administration.

As against these merits of party system it is said that party system often fosters partisan mentality, leads to corruption and bribery and exercise of tyrannical influences over their representatives and general public. To be successful party adopts dubious vote-capturing devices to secure largest number of votes. Promise are never meant to be fulfilled. Competitors and opposing contestants are ridiculed and misrepresented. Party passion and loyalty sometimes so heated up that calm thinking and cool action give way to frequent combats between rival groups. Party system has “demoralised policies and made them sordid”. Parties are often ruled and dominated by bosses so that the representatives in legislature are mere “dumb driven cattle” whose individuality is crushed and initiative hampered.

Due to the imperfection of party system which fosters separatist and divisionist tendencies, sectional interests are given preference and priority over national interest. Party interest is furthered and the feeling of patriotism is banished. Issues are not determined on merit but suspicion and ill-will play the major role in their determination.

When party politics are going on in the manner described above the State loses the services of the best men of the community because they may lie idle of such election campaigns or may not have a label of particular party which is interested in reserving important posts for its members. Moreover, political life becomes artificial and mechanical and there is no room for independent thinking. No criticism is allowed within and without but every member either must be loyal to party principles or must clear out.

In spite of this criticism, party system has worked successfully in a country having two-party systems. A strong majority party government and an equally forceful opposition is deemed essential if parties are not to degenerate and deteriorate. Moreover, what is necessary is honest, conscious, vigilant and intelligent public opinion which may prove helpful in uprooting the evils of party system. Still, however, some reform of party system is deemed necessary. Parties with no clear programme or parties mainly organised for breaking other parties should not be tolerated and allowed to exist. Parties based on not economical differences but mainly on caste, community or religion represent national weakness and not strength. They endanger the very existence of a State by their fissiparous tendencies and distort economic, social and political policies by their sectarian outlook. Such parties should have no place in the political system. What is important is that in no case parties should be allowed to have armies of their own. Seats should be captured, elections should be fought on political grounds and the weapons of persuasion and conviction should be used. Administration should be beyond the reach of parties and politicians. "The failure of the party system is partly a reflection on the people themselves. The intelligent voter must be able to recognise right from wrong and should be willing to break traditions and customs and must be against his conscience and judgment being dominated and dictated to, which would easily avoid party dictatorship. Clearness of the head as well as pure heart both with regard to people and politician is necessary if parties are to work well. Truthfulness, honesty of purpose, single-minded devotion to public weal, will shatter to pieces party cliques, corruption and bribery. What is required is character, independence of judgment, horror of bribery and corruption, keen sense of public duty which will make parties a synonym for co-operative methods of realising the common good.

CHAPTER VII

ORGANIZATION OF GOVERNMENT.

1. *Theory of Separation of powers.*

Due to the extent of area and vastness of population of State and the complexity of affairs both national and international with which modern States have to deal the function of the Governments are carried on by a number of persons and the distribution of powers takes place according to the functions performed. The will of the State must be expressed in the form of law and hence the existence of Legislature ; this expressed will or commands of the State must be administered and therefore the presence of the executive ; the laws must be applied, interpreted and therewith the necessity of judiciary. "The theory that these functions should be performed by different bodies of persons, that each department should be limited to its own spheres of action without encroaching upon the other and that it should be independent within that sphere is called the theory of separation of powers."

A lucid exposition of this theory was given by Montesquieu. According to him Government powers are threefold—Legislative, Executive and Judicial. Concentration even of the two in the hands of a single person would endanger individual liberty. Hence he stressed the necessity of investing these departments to different and distinct organs.

Containing as it does a universal truth, rigid applicability of the theory is nowhere desired nor it is possible. Each of the three departments are correlated and dependent and exercise powers which rigid application of the theory would not allow. Government is a unique whole which cannot be divided into watertight compartments and a rigid demarcation would not only impair the efficiency but bring down the entire structure. Deadlocks and conflicts will ensue as each department will try to be

Meaning of the theory

Montesquieu's exposition of the theory

Impossibility of rigid application of the theory

supreme and compete for power. The main task of the Government is the formulation of Law which is the most superior and antecedent function even though that needs an essential degree of harmony. Subordination of organs engaged in executive laws is absolutely necessary. In the absence of a feeling of good will and mutual co-operation efficient administration will be difficult. Legislature has to depend upon Executive for adequate, accurate and right information, recommendation and suggestion, so that good laws will result out of legislative deliberation and co-operation.

It is not a safeguard against liberty ; not by rigid separation of powers but by concentrating authority in the organ that is popularly elected that liberty may be preserved. Moreover liberty is a subjective concept. Where people are vigilant guardians of their rights there is no necessity of any such artificial arrangements.

None of the modern States have made an attempt at the rigid application of the theory. "Extreme separation of powers presents the unity and co-ordination necessary to administrator the legally expressed will of the State." "Legislatures not only create law that the courts apply but in serving as courts of impeachment or as courts of final appeal, they exercise powers that are properly judicial." "The executive in its power of pardon and in deciding many disputes arising in the course of administration also shares in judicial authority." The lower courts are frequently important administrative as well as judicial tribunals and courts exercise judicial functions in issuing certain writs in extending or restricting law by interpretation." "The executive in its veto power of issuing ordinances to existing laws share in legislative authority." "The power of Executive to make treaties is limited by the requirement of legislative approval."

**The principle
as it stands
today**

Each department performs functions which do not necessarily cover its sphere of jurisdiction but whenever it goes outside its own sphere it is in order to perform essentially its own deputed function. Moreover Government consists of men, living individuals not automatons. Laws of machinery do not hold in case of human beings who are to be persuaded and not dictated. The actions, reactions and interactions of the Governmental organs create a harmony which secures smooth.

ness and efficiency. Irrespective of but not disregarding the criticism the truth in the theory cannot be neglected. Even though complete separation is not possible, the functions of Government should be enumerated and allocated to different bodies as far as possible so that each department would act as a check upon the other. Moreover the theory can be taken to mean as emphasising the independence of judiciary. This doctrine was at one time of great value against the despotism of monarchs and even to some extent of parliamentary executive. It is also said in favour of this theory that "it lays down the sound principle that Government must act according to well established laws or rules. Arbitrary rule is a negation of good Government."

2. Legislature

Amongst the three important organs of the Government—the Legislature, the Executive and Judiciary—the legislature is the most important organ where the will of the people is expressed, and formulated in the shape of laws. These laws are interpreted by the judiciary and put into action by the executive. "The legislative authority forms the major premises, the judiciary the minor and the executive, the conclusion." The main function of legislature under Democratic constitution is concerned with discussion and deliberation which means the presence of a large number of persons representing all classes, creeds, sections and interests. It derives its power from the entire mass of people. It must be truly representative of public opinion and views of citizens who are its ultimate masters.

Even though almost all States have adopted the policy of dividing the legislatures of the country into two Houses a wide controversy ranged over the constitution of legislatures. As against bicameralism which means two-chamber system many favour unicameralism where the legislature has only one House.

The existence of the two-chamber system implies the fact that their organizations, powers and functions, methods of representation and franchise should be differently construed. "If second chambers are necessary at all, they should be distinctive from the popular House, act independently without

being irresponsible and possess the necessary capacity and impartiality to revise the work of the Lower House effectively."

It is said that second chambers are necessary as a useful check upon the party and ill-digested legislation of the Lower

**Healthy
rivalry
results**

Houses. The lower chamber being popular in origin may be carried away by emotions. In the process of discussion in Upper House, the impulsive character of the bill fades away.

Between two Houses there is likely to be healthy rivalry causing each to subject the measure of others to careful scrutiny and resulting in more careful analysis of principles and needs. By making therefore a provision for revision, rediscussion and reconsideration, the second chambers compel time for further reflection and deliberation.

The existence of a single chamber alone may cultivate despotic and tyrannic tendencies and the legislature may

**Despotic
tendencies are
properly
checked**

arrogate to itself the executive and judicial powers thus endangering the individual liberty. The necessity of two chambers is based on the belief that the innate tendency of an assembly to become hateful, tyrannical and corrupt needs to be checked by the co-

existence of another House of equal authority.

Moreover it is said that bicameral system makes possible the representation to special classes, interests

**Representation
to special
interests**

and minorities. These elements are conservative and orthodox and thus counteract the revolutionary and dangerous tendencies in the lower chamber.

"The second chamber may be a chamber of statesmen, a council of wise and experienced"—the leaders elected to the

**Council of
the wise**

lower chamber may not be necessarily wise even though they catch the pulse of public will. The second chamber allows the active participation of the intelligentsia in the com-

munity which may yield better results.

It is said that two Houses make possible a more correct interpretation of the general will. A single

**Correct inter-
pretation of
the general
will**

House elected at a fixed time and after prescribed intervals may grow out of sympathy with popular opinion. Two Houses elected at different times and terms represent more

accurately public opinion and remedy the defect.

The existence of two Houses promotes the independence of executive. There is a tendency in a single House to become tyrannical and dictate terms to Executive.

Independence of the Executive secured In case of bicameral system the executive can be held responsible to both and in checking each other the two branches of legislature permit to Executive a greater degree of freedom of action and responsibility.

However, the second chamber has been regarded as "a clumsy and complicated addition to the structure of government." It has been pointed out that second chamber is unnecessary and of complicated duplication. The classical argument against bicameralism is that "if a second chamber dissents from the first, it is mischievous, if it agrees with it, it is superfluous" because disagreement with popular chamber means non-conformity with popular will, and agreement or coincidence of opinion on any issue means reflection of the will of the first and therefore unnecessary duplication. Moreover second chamber because of its conservative nature may prove to be stumbling block in the way of progress and by over-safeguarding the interests of minorities they may neglect the interests of majority. It is also an unnecessary burden on the finances of the country and due to equality of footing with the Lower House may unnecessarily delay the passing of good laws. Moreover, since it creates unnecessary dualism in the organisation of Legislature with the passage of time, delays disappearance of vested interests and acceptance of equality for all, it is felt that there is no necessity of representing the special interests in the community.

However, the modern tendencies are not towards wholesale abolition of second chambers but towards remodelling them by curtailing their powers. To destroy them by a rash action would be to disown the virtues of bicameralism which may prove costly, and where federal constitutions prevail second chamber is felt and deemed absolutely necessary to represent the units of federation.

Modern tendencies

The legislature of the country performs various functions. The prior and constituent function of the legislature is formulation of the statute law of the land.

Functions of the Legislature Legislatures are the mirrors of the public opinion in the country. The laws passed by the legislature are therefore those which nation demands as essential to its well being. Naturally such laws always take into cognizance the changes and developments in public opinion. Besides this function of law-making, in many States the legislature could amend, change or alter the constitution of the State partly or wholly, thus sharing in the creation of constitutional law. Moreover legislature holds the national purse by its power over the finances and expenditures of the nation. It decides how the money should be raised, in what quantities and ways of expenditure, and actions in these respects can only be taken after obtaining the seal of approval from the legislature. In cabinet types of government, legislatures exercise a wide range of control over the executive. The members of the legislature can ask questions, can move a vote of no-confidence and thus act as a check on executive authority. They possess the final authority to determine how the administrative branch of government shall be organized, how duties shall be distributed among the several parts and what methods of procedure shall be employed by them. "They exercise many powers not purely legislative in deciding contested elections, trying their own members or impeaching other officials they exercise judicial powers."

3. *Executive*

Executive is the most important and fundamental branch of the Governmental machinery and in democratic as well as in non-democratic States it exercises an omnipotent authority. It executes the general will as formulated by the Legislatures and its primary function is the maintenance of peace and order internally as well as externally. In the restricted sense of the term only the heads of the executive departments or supreme head comprise the executive, in the usual sense it

Executive—A prime branch of Governmental organization

consists of all government officials concerned with the execution of the State's will.

The function of the executive inherently differs from that of legislature which is concerned with deliberations and discussions with caution and compromise thus indicating an existence of a large number. Efficiency is the soul of executive and naturally it requires promptness in decision and quickness in action. This reasons the argument that executive power should be concentrated in the hands of a single person or a group of persons possessing adequate power, permanency of tenure possible under Democratic law, and unity. The executive, therefore, forms into a definite hierarchy with the executive head at the top, the cabinet in the middle and civil service at the bottom.

There are various methods followed in the selection of the executive head. He may hold the office hereditarily. In the beginnings of political organisation by virtue of their birth or by popular choice, authority came to be concentrated in the hands of persons who became autocratic rulers with the divine sanction as it were. With the development and growth of political consciousness amongst the masses the absolute monarchy faded into insignificance and the hereditary principle came to be supplemented and limited by constitutions, parliaments and cabinets. Still the importance of the hereditary executive cannot be forgotten which provides a symbol of national tradition, prestige and unity as in case of England, even accepting the fact that the political executive or cabinet in England is the real source of supreme power.

The office of the supreme executive may again be elected by direct popular vote as in the case of executive heads of the units in the U.S.A. or indirectly as in the case of President of the U.S.A. or by Legislature as in case of Great Britain, because it is said that it stimulates interests of the people in political affairs and imposes upon the Executive a sense of responsibility. On the other hand, it is said that with election come all the abuses thereof and moreover the executive head is bound to be dictatorial as he is confident of public support.

The office may again be elected indirectly by a body of electors capable and intelligent as in the case of the President of the U.S.A. and it was believed that such a system would avoid the danger of popular upheavals and bitterness accompanied with direct election.

The executive may again be elected by Legislature as in case of Prime Minister of Great Britain. Such a system, it is said, secures better co-operation and harmony between Executive and Legislature, which will, however, make executive powerless and dependent, violating the principle of separation of powers.

Tenure of office There is no rigid and fixed rule regarding the tenure of office of the Executive. Some favour a long-term tenure pointing out the benefits of consistent policy, stability and avoidance of the cumbrous procedure of elections. Those who favour short-term tenure stress the point that executive will behave with a sense of responsibility and will not be tempted to misuse the power at its disposal. Whatever the theoretical differences, every country follows its own method and way by fixing the tenure and allowing for re-election. "Usually some method is provided for removing the elected executive by impeachment or by recall and some provision is made for succession to the office or for a new election in case of death or removal."

The Cabinet The complexity of administration and the enormous amount of work necessitate a division of the Executive organ into various departments like Foreign Affairs, Military, Legal, Financial and Internal Affairs, Colonies, Agriculture, Commerce, Education and the like. As a matter of principle these fundamental departments are under the authority of single heads who, besides being political personalities, discharge various and multifold functions. They are called ministers and in a group they form themselves into a cabinet. It is interesting to see the nature of the cabinet in the constitutionally and Democratically advanced countries like the U.K. and the U.S.A. In the U.K. "the British cabinet consists of from fifteen to twenty members appointed by the Crown on the nomination of one of their number who is first chosen prime minister. He is the actual

Executive Head in the U.K. He directs the other heads of the departments and in turn is dependent upon the legislature, because of the necessity of maintaining a favourable majority in the House of Commons. Not so is the case with the U.S.A. "What is called cabinet is voluntary association of the heads of departments, whose opinions the President may require but need not accept and whose tenure is dependent upon his will."

As said above the executive consists in the broadest sense, the lower, permanent Executive heads of administrative

The Civil Service

departments known as civil service, responsible for the execution of policy as outlined by the cabinet or supreme executive, efficiently and trustworthily. They are appointed on the merit of competitive examinations and usually form a hierarchy with power ascending from below. For the efficient and intelligent administration, the Government has to depend upon this permanent civil service which is supposed to be above politics, able, trained experts and skilled and which is supposed to function smoothly and wholeheartedly irrespective of the party politics going on in the country. As against the legislature and cabinet ministers who are dependent upon public will and therefore liable to change, this civil service or bureaucracy maintains continuity and permanency in the Government policies and represents as it were the link between past, present and future. Due to being routine bound there is a danger of this bureaucracy becoming conservative, high-handed, unsympathetic, indifferent and unimaginative and there is every chance of their behaving irresponsibly. What is necessary is the creation of enlightened public, always interested in political affairs of their own, critically reviewing the behaviour of the bureaucracy. This will help bureaucracy to be alive to public opinion and therefore having Democratic tendencies and instead of being bulwarks against the progress of the country they will advance the cause of true Democracy.

The executive is required to perform a variety of functions. The diplomatic function consists of conducting foreign

Diplomatic and Military functions of the Executive

affairs, concluding treaties with other nations, sending representatives to other nations and accepting such representatives of other nations. The Military function includes the dismissal and appointment of officers in

army as well as disposal of armed forces. Even though consent of legislature is necessary for the declaration of war, for execution of war duties and successful prosecution, executive can make war and peace inevitable. In times of war it is practically dictatorial, commanding the life, liberty and property of citizens.

The administrative power of the executive consists in directing and supervising the execution of laws, supplementing the details of general laws by issuing decrees, orders, proclamations. It includes financial, commercial, agricultural and educational administration, and also power to appoint, remove and supervise subordinate administrative officials.

Administrative function

The legislative power of the executive is visible both in cabinet and presidential form of government and it means sharing directly in legislation as members of law-making body, guiding and directing its policy as long as they possess its support. It summons, prorogues or dissolves the legislature. It may have the power to veto the act of legislature and it may initiate legislation by providing informations and recommendation to legislature as to the general policy to be adopted.

Legislative function

The judicial power of executive is "the power of reprieving or pardoning criminals and of granting amnesty to persons who have taken part in revolutionary movements is usually regarded as properly belonging to executive." This power is absolutely essential "because of the imperfection of law and too rigid administration of justice."

Judicial function

The foregoing discussion points to the fact that unity, promptness of decision and quickness of action are real tests of a good executive. With the decline of faith in parliamentary Democracy all the suspicions about executive becoming dangerous have vanished with the crowning success of the popular will. The uncertain and unsettled political conditions of the world which require a vigorous pursuance of a

Tests of a good Executive

definite policy may lead to the expansion and concentration of powers in the hands of executive even though the necessity of popular control over executive will be deemed essential.

4. *Judiciary*

Judiciary is that organ of the Government which interprets and makes laws. It is an impartial custodian of the rights of citizens and protects the innocents from injustice. It is said that a country may have a very good legislature and an excellent executive but if it does not have an independent and impartial judiciary, its constitution is not worth much. Naturally an excellence of the judicial department of any country is a measuring rod of the excellence of its Government.

Excellence of Judiciary

The main function of the judiciary is to apply existing Law composed of customs, statutes and written constitutions to individual cases. It is quite possible that a particular case may not be covered by the existing law so that the judge may be required to determine the exact meaning of law or he may also be required to apply general principles of justice and morality. It is in this sense that judiciary creates law. This is the non-judicial function of the judiciary.

Non-Judicial function of the Judiciary

Besides the judicial or original function of judiciary which mainly consists of adjudication in civil disputes and trial of criminal cases, the judiciary also appoints certain officials, guardians, trustees and receivers for bankrupt corporations. It issues injunctions preventing a wrongful deed. Moreover when asked by legislature or executive, it makes a correct interpretation of law and it, therefore, acts to some extent and indirectly as a guardian of constitution. "When question arises as to the limits of the powers of the executive or of the legislature, it is by a court of law that the true meaning of constitution ought to be determined."

Executive and Advisory functions of the Judiciary

If the executive department is organised under a single head, if legislature is composed of two numerous assemblies the judiciary consists of a hierarchy of judges with power ascending from the bottom and a supreme court at the apex. The ordinary courts decide controversies both criminal and civil. The above rank in the hierarchy may serve as appellate and original courts of jurisdiction. Moreover there are many special courts created for specific purposes like criminal courts, industrial courts, labour arbitration courts, etc.

Judiciary consists of a hierarchy of courts

The cases upon which the judges have to pronounce judgments may be between individuals or between individual and State. The judges not only apply the existing laws, but interpret them and also remove its inconsistencies and ambiguities. It means that they must be thoroughly trained in law and must have a developed judgment, comprehensive and vast amount of legal knowledge. The success of the judiciary depends upon its impartiality and independence. It should be above party politics, beyond interference and dominance by any interested party, and if adequate salary, permanent tenure, promotion on the basis of ability and legal eminence are assured they cannot but be impartial and independent in their judgment.

Judiciary must be impartial and independent

Various methods have been utilised for the selection of judges. (1) They are either appointed by legislature, which means destruction of the independence of judiciary and dragging the judiciary in party intrigues and muddles; (2) or they may be elected by the people. This method does not commend itself as due to incompetency of the masses in the selection of judges, weak and unintelligent judiciary may be chosen whose impartiality is chanced to be hampered by prospects of re-election. Moreover a country may not get the benefit of the services of the best legal talents due to their averseness to win popular support by methods necessary to a success; (3) or they may be appointed by the Executive. This method is favoured because it tends to secure learned and independent judges, as executive is competent and able.

Methods of selection

to select men of ability who are likely to be independent of political or sectional considerations or of popular influence. But if good behaviour is regarded as one essential condition for permanency coupled with selection by executive, it will not only make judiciary strong but independent and impartial.

5. *A Note on Constitutions*

A set of fundamental rules which decide the form of the State and the structure and functions of the Government is called the constitution of the State. The constitution determines the distribution of powers amongst the various organs of government, their mutual inter-connections and

Meaning of constitution

also decides the relations between the rulers and the ruled. Constitution precedes the State not in the sense that it creates States but it is the outward formulation of State existence. "Naturally every State must have a constitution. We can therefore clearly distinguish between constitutional government which is a government of laws and personal government which is founded on caprice and whim, and thereby define constitution by saying that it is a "collection of principles according to which the rules of government, the rights of the governed and the relation between the two are adjusted," or as a product of "all rules which directly or indirectly affect the distribution or exercise of sovereign powers in the State."

Modern constitutions have been classified into written or unwritten, rigid or flexible. Written constitution is one in which the fundamental principles of the organisation of government are written down in one document or embodied in one single instrument or instruments and it is therefore an outcome of conscious efforts on the part

Written and unwritten Constitutions

of the politicians. In the case of an unwritten constitution the rules and regulations which govern the organisation of government are a composite mass of customs, usages, judicial enactments and statutes created at different times and therefore not found in the form of a single written document. This distinction between written and unwritten constitutions is that of degree only. Because constitutions are always modified by customs, usages and judicial interpretations. They may not be incorporated in a written document and the

existing constitution may fall short in dealing with existing form of political organisation. "Written constitutions are developed by interpretation, fringed with decisions and enlarged by customs, so that after a time the letter of their text does not convey the full effect."

On the other hand the unwritten constitutions have in them a large proportion of enacted and written laws and documents. Thus when we see that written constitutions have unwritten element and unwritten constitutions have a written element, classification of constitutions on this basis will be unscientific.

The second classification which is more scientific and reasonable is based upon the relation between the constitutional law and ordinary law. If the constitution can be easily amended and altered in the same way as the ordinary law by the ordinary law-making body, the constitution is flexible and therefore constitution is on par with ordinary law and has no superior validity. If to amend, alter or change the constitution, a totally separate organ or different and strict procedure is required than that needed by ordinary laws, it can be classed as rigid. In this case constitution is of a special sanctity and validity than the ordinary law.

Rigid and flexible constitutions

Designed specially to lay down elaborately the organization of Government, the written constitution is bound to be clear and definite and as it provides a special procedure for amendment it cannot be so easily twisted by legislature at popular demand. But this element of stability often exhibits a sign of rigidity. It may retard reform and may become outgrown and more a stumbling block in the way of progress. Here at least unwritten constitution has the advantage of being flexible. It meets the popular demand and fosters respect for constitutional law. This flexibility is useful in political crisis but only when people are conservative and ever-vigilant to guard the historical traditions. However, the advantages of unwritten constitution are open to attack as "they provide for no distinction between constitutional and Statute law and

Merits of a written constitution

Disadvantages of an unwritten constitution

because they give too much power to the judiciary to discover constitutional principles in a long-accumulated mass of customs, laws and decisions."

Flexible constitutions are easily amenable to change, are elastic and adaptable to new and changing circumstances.

Merits of a flexible constitution

When the community is constantly advancing and paving its way through progress, the flexible constitution proves a safety valve. The rising revolutionary fervour in crises and emergencies can be prevented by its strength in preventing revolutions by meeting them halfway. By the immediate introduction of reform that is demanded by people and deemed essential, the revolutionary fervour and popular passions fade away. That does not mean that the change introduced is permanent. The changes are only transitional and temporary to meet the needs of time without finally changing the fundamentals. "They can be stretched or bent so as to meet emergencies without breaking their framework, and when the emergency has passed away they slip back into their old form like a tree whose outer branches have been pulled aside to let a vehicle pass."

This easy liability to change becomes dangerous. The constitutions become weak, unstable, lack "guarantee of solidarity and permanence, as they are con-

Dangers in a flexible constitution

stantly changed with every change in the whim of the public. They are in a state of perpetual flux like the river of Heraclitus into which a man cannot step twice." Moreover they lack certainty, clearness and definiteness as against rigid constitutions which are written and therefore stable, definite and certain and immune from being vague. Moreover as they provide a procedure for modification, legislature directly and people indirectly cannot change it with a passing phase of passion. Naturally it is a best safeguard of the rights and liberties of citizens.

However if this element of rigidity is carried too far, there is always a chance of dangerous uprisings as really genuine public demands do not receive a response and legal sanction, however necessary and essential they may be. "The great cause of revolution is this that while nations move onward,

constitutions stand still." Moreover rigid constitution does not take account of future progress and frames the constitution for people to what as they are and not to what they will be.

**Merits and
demerits of
a rigid
constitution**

Theoretically it may not be against progress but it does not allow for and takes no cognizance of this factor. It needs be said that these defects have been a bit exaggerated because rigidity does not refer to permanence and fixity but refers to the difficulty of

altering and modifying the constitution. "Rigidity does not mean permanent inelasticity, it implies changeability within limits."



CHAPTER VIII

RIGHTS

1. Justification of Rights

The very idea of rights if viewed superficially seems to us a contradiction in terms. If we accept that in every politically organised society there must exist some supreme authority to which individuals pay a willing consent and respectful obedience, the fact that individuals as individuals and as a corporate body are interested in securing their certain conditions under which the highest development of their personality, intelligence and instinct of freedom is achieved seems to be a fundamental contradiction between sovereignty and rights; but a careful observation will prove that rights far from being contradictory and opposed to sovereignty are only possible if sovereignty exists, because "sovereignty carried to extreme becomes tyranny and destroys liberty, and liberty carried to the extreme becomes anarchy and destroys sovereignty." It is in the compromise of these two ideas that the existence of rights is justified. Naturally state is the fountain through which rights emanate and it is the State that safeguards its own creation. The social framework is so complex in nature that due to the peculiarities of human nature, the State has to regulate human behaviour in order to secure a harmonious co-operation of conflicting interests. So the laws of the State are not only the limitations on the freedom of individuals but also guarantees and safeguards the rights which citizens enjoy. The end of State will, therefore, be the maximization of social welfare and social values. But society is composed of human beings and social welfare ultimately means human welfare. Social values centre round the atom of society which is man and the aim of society is the development of human personality. The development of human personality is possible only if human initiative, human enterprise and various other aspects of human nature are given full scope and freedom to manifest themselves. Just as

state exacts obedience from individuals it is the duty of the State to create such circumstances that human personality may fully develop. Rights understood in this sense are counter claims by the individual on the State; they are the opportunities accorded to the citizens by the state. "Rights," says Laski, "are those conditions of social life without which no man can be his best self"....."Right is a power claimed and recognised as contributory to common good". Naturally, rights require social recognition. They can exist only in a social organisation and without the sanction of society they are empty claims. Moreover, rights are disinterested desires and not selfish claims. They are not based on caprice or whim of the individual. "In asserting my right I am really rendering a public service and when I fight for the rights of others may do so at great personal loss. No true right is based on individual caprice." The matter is one of fact and logic, not of fancies and wishes. Naturally, we cannot accept the theory of natural rights which emphasises the fact that every man has a right to every thing, even to one another's body and all rights inhere in man and need no justification and explanation because it would mean extreme individualism which may lead to anarchy and assumption of the fact that rights are pre-civil and exist independently of any social or political organisation. Our original argument, which is real and true is that rights arise from the fact that man is a social being and a right is a claim recognised by society and enforced by State.

Classification of Rights

Civil Rights

Rights can be broadly classified into moral rights and legal rights. Moral rights are those which are based upon our sense of justice and are believed to be privileges with which other persons and the State should not interfere. Everyone desires to do as he likes, to be free from interference or from social conventions and even desires independence and right to govern. As these cannot be treated as legal rights and enforced by law, in case a sovereign authority does not respect and protect these rights the only course open to force

the sovereign authority to do so is revolution or war. In this sense they are not legal. Legal rights are those which are recognised and enforced by law. They are further classified into civil and political rights. Civil rights imply the right of each to do as he likes within the limits of law and without which civilized life and existence will be impossible. Civil rights are those rights to be free from restraint in the pursuit of their interests which the State confers upon its people by law and which it will protect in its course because without such a protection man will not be able to realise his best self and contribute his share to the advancement of the social cause.

If through the concession of civil rights State creates circumstances for the enrichment of human personality and ultimately enhances social welfare, through political rights it confers upon the people the right to share in the governing authority.

Political rights

Political rights make it possible for the individual citizens to participate in the Government of their own country and in the case of a Government controlled by the people a safeguard will be provided for the interest of all. The citizens enjoy these rights by their being the members of a political organization. Naturally it means active participation, encouragement of interest in the affairs of the community. This fact widens the outlook of citizens and brings them closer to the complexities of community life. Political rights therefore are essential to the full development of human personality.

Thus it will be seen that political and civil rights are the creations of the State and guaranteed by its law. Political and civil rights alone are rights in the legal

Civil and political rights are complementary

sense. However such a clear-cut demarcation between the two would be artificial because of their mutual inter-connection and interdependence. "Civil rights find their guarantees in political rights and political rights have no significance without civil rights. Political rights without civil rights appear like the king without the Crown, gold without value."

3. Particular Rights

(i) *Right to life and its implications*

The right to life can be regarded as the basic foundation underlying the theory of rights because "life without liberty is useless and conversely it is the use made of life that gives one the right to life." The ethical basis of the right to free life is therefore the capacity of the individual for membership in society i.e. the presence in him of "the conception of a well-being as common to self with others". The right to life has various implications. Firstly it means duty to live. Naturally an attempt at suicide is punishable by the law of the State and individual is not justified in taking his life. As they are the individuals who compose society, the life of the individual is valuable from the point of view of general welfare and suicide, therefore, is regarded as an offence to oneself, an offence to community as well as an offence to God Himself.

The second implication automatically follows from this because if it is understood that to commit suicide is to eliminate an individuality which has rights as well as duties, to take another's life by committing murder is also an offence legally punishable. The question is therefore sometimes put that in hanging a person is there not a clear violation of the right to life of the hanged? Strictly speaking such a person has no legal as well as social claim to remain as a member of society in future because of his unassociable will, but it is argued by those who are against capital punishment that often a wrong man is sentenced to death, and "that death penalty has had a bad effect upon society intending to cheapen human life and make people callous to human suffering that it is a relic of the barbarous times when vindictiveness characterised the dealings of men; that many a murderer is an irresponsible person and does not realise the gravity of his crime and that the death penalty has not acted as a sufficient deterrent". As a counter argument it can be said that we should not consider the merits of case on pure sentimentalism and emotion because a man who takes the life of other for the

**Murder is
legally
punishable**

as duties, to take another's life by committing murder is also an offence legally punishable.

sake of his own interest has forfeited his claim to life and as a man deliberately injuring the lives of the members of society he is not fit to live in that society. Moreover insanity cannot be regarded as a ground sufficient to leave a man scotfree. Recourse is often made to insanity after all other attempts have failed. Our conclusion is therefore that capital punishment is an effective check on murders and the substitution of life imprisonment for capital punishment is no improvement in the case of a cultured and a sensitive individual for "one as much as the other is an absolute deprivation of free social life and of the possibilities of moral development, which that life affords." However it should be noted that the ignorants and lesser criminals should not, ought not suffer when law takes its own course.

The right to preserve life naturally includes right to self-defence not tantamount to aggression which is quite unjustifiable according to the prevailing belief. However the difficulty is with the explanation of the terms as self-defence and aggression. We must know what is being defended and on what aggression is being made. The question appears to assume a critical importance in times of emergency and war when State calls upon the individuals to sacrifice their lives for the cause of the nation. Can this not be called a violation and a breach of individual's right to life? Wars cannot be treated as natural, inevitable and necessary. It is not because States exist but because they do not fulfill their functions as States in maintaining and harmonising general rights, that such conflicts are necessary. On no grounds wars which involve cruelty, treachery, fraud and destruction and waste of human life and civilization can be justified even if it is said that "the state of war shows the omnipotence of the State in its individuality". The conclusion is therefore natural that "Democracy and war are irreconcilable and therefore the ideal of Democracy must provide an alternative to war as an institution."

Moreover "it is claimed that a corollary of the right to life is the right to have life upheld when the individual is unable to do so by his own effort." It means every

(i) Right to work and economic minimum

man has right to maintenance and right to work and it is the duty of society to throw its own measures and weights in case the indivi-

dual is unable to maintain himself and thereby deprived of the valuable part he has to play in society. In justification of this claim it can be said that with the advancement of science the social organization has become so complex and individual rendered so helpless that society should not and could not afford to allow an individual to die of starvation. "This will mean among other things a minimum wage law, a radical redistribution of property among the members of society, severe restrictions on bequest and inheritance, discouragement of the idle rich, prohibition of waste and display and in the last resort, some sort of poor law together with a work house test."

Very akin to the right to life is the right of liberty. Liberty has been the instigating and moving force throughout the period of human history. It has never meant absolute freedom to behave as one likes, to be least interfered when one acts, thinks and behaves as a member of society

(ii) Right of Liberty

but the greatest liberty possible for all results when each person has the right to do as he pleases while encroaching least upon the equal right of others to do the same. What every man can expect is the full and free development of his personality and not unrestricted freedom to pursue his ends disregarding the consequences. "The right of liberty is relative to this end". Naturally liberty would mean the right of man to plan his life course the way he thinks which would enable the exercise of his various capacities both mental and physical without going to the extremes as Mill according to whom not only men should be allowed to experiment with life "so long as his actions do not directly and definitely affect others but also they should be allowed to experiment in extravagance, viciousness and drunkenness, subject to consequences. We can say that liberty and personal freedom is greatest of all political goods and "to renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties."

The conception of liberty has come to include both (1) civil liberty which "includes liberty to free action and immunity from interference and consists of the rights and privileges that the State creates and enforces such as (a) freedom of the person, (b) equality before the law, (c) security of private pro-

perty, (d) freedom of opinion and of its expression and (e) freedom of conscience" and (2) political liberty which stands for the rights to be active in the affairs of the State and implies such rights as rights to vote, right to contest election and right to stand for public offices.

Still, with thus understanding the meaning of liberty, the idea that liberty and authority or sovereignty are two contradictory and exclusive terms is a mistaken

Liberty and Authority

notion. On the other hand it can be said that it is not the absence of some form of authority but the presence of authority for the maintenance of liberty and its adjustment to liberty upon which both individual welfare and the State's existence depend. "The ideal condition requires a sphere of civil liberty sufficient to secure individual interests and a Government whose commands are definitely expressed and authoritatively enforced. At the same time there must be the minimum amount of friction between Government and citizen, in order to maintain the stability of State." Leaving man in an absolutely free and unrestricted atmosphere is going back to the State of nature. Freedom implies and underlies some form of law. What history shows is that men free themselves under another. In fact the happiness of man depends upon authority and if happiness means freedom and liberty, the more he desires it, the more he must be ready to submit to the superior authority of law. Submission and obedience is the price which the individual has to pay in order to preserve and maintain the freedom he so values. "Liberty in the sense of positive opportunity for self-development is the creation of law and not something that could exist apart from the action of the State." Obedience to a law which we prescribe for ourselves is liberty, for law is not merely a command, it is also an appeal.

This right can be regarded as a condition precedent to the existence of personal liberty. An individual has a right to act

Liberty of Action

or choose his own course of action if it does not interfere with the general good of society. In case of a restraint, obstruction or prevention by others when an individual is exercising his own right, the duty of the State is to protect the

individual considering these interferences as assaults and acts of violence. Not only law protects the life of individual in such cases but allows the individual the right to defend himself by use of force to some extent, if his life is in danger. The violation of this right does not only come from individual but also from the State itself which may arrest and imprison any person whose behaviour is not in concurrence with the law of the land. Various safeguards like (a) redress for wrongful arrest which means "that a person who has been wrongly arrested can either have the wrong-doer punished or exact damages in proportion to his injuries, (b) the Writ of Habeas corpus which demands immediate trial of man who is under arrest before the court of law and (c) the rule of law in general, has been provided which have proved to be of great importance in curbing the arbitrary actions of the Government and forced them to abide by the implicit sanctions of the law of the land.

Simply freedom to think in a way one likes has no meaning at all. Unless and until that thinking comes into the

Liberty of Speech

limelight and is extended to speech and action it becomes a torture which eats away the soul. Freedom of thought has been regarded as a creator of new ideas and as the very foundation of all other liberties. Mill believed that liberty of thought should have for its corollary liberty of speech and that liberty of speech should have for its corollary liberty of writing. Moreover it (freedom of thought) has been regarded as the great solvent of all fanaticisms and an essential factor in the development and making of human personality. However with all the merits attached to this notion of full freedom of thought, speech and action, society and State limit and restrict the free expression of views through public opinion and laws relating to libel, slander, defamation, blasphemy, sedition etc., respectively. The idea behind such a restriction is that the expression of one's all ideas and views often becomes too offensive and a potential danger to social order and public morality. It is within the bounds of State to protect the reputation of the individual which is regarded as a sacred possession and any individual who is found to be incriminating against the conduct and character of another is punished by the laws of the State. Leaving aside the question of the protection of relations between citizens, the factor whether there

is right to criticise Government, assumes importance. To call in question the authority of the ruler is a fundamental and essential safeguard of liberty. "There will never be liberty in any state where there is an excessive concentration of power at the centre." That, however, does not mean that individuals have a right to disturb the peace and stability of the State by acts of reckless violence, and no State could tolerate such acts that defy the authority of the State. But according to some political thinkers, "all restrictions upon freedom of expression on the ground that they are seditious or blasphemous are contrary to the well-being of society, for the heresies of today are the orthodoxies of tomorrow." It is only in times of dangers and emergencies that restrictions upon freedom could be tolerated.

Mill not only pleads for liberty of thought and expression but also favour liberty of action. However, he divides conduct into individual and collective and says, that

Mill on Liberty of Action as self-regarding action or behaviour concerns only the individual alone there should not be any kind of interference, but the case of

other-regarding action as it affects others apart from the individual should be as a matter of fact regulated by State and society. However this theory of Mill which divides conduct into two parts is open to criticism. If individuals are taken to mean the atoms or fragments with whose help the social structure is raised there can be no difference in individual good and social good and they become mutually inter-dependent. As such, individuals cannot be left alone to take care of themselves. The relations between individuals and society and States of which he is a member, are so close and intimate that the latter shoulder a responsibility towards individual for his self-development. Under modern political conditions when there is a fear of freedom and when individuals are considered far from being the best judges of their interests, to allow a least concession to this theory to go in practice is dangerous.

This is so far as individual action is concerned, but so far as collective action is concerned, right of public meeting, right of association, right to boycott, picket and strike are the recognised rights of collective action. It can be said in favour of the right of public meeting that it provides a safety valve

for the pent up feelings of people and a ready platform for the grievances and aspirations of minorities, and saves the police the odium of favouring one set of opinions as against another. So long as opinions are expressed within certain bounds and limits, there is no danger of allowing their expression publicly, because "it is a useful part of citizen's education to be able to hear the most divergent opinions propounded without a breaking of heads, either by the mutual efforts of the audience or by the guardians of the public peace."

The right of association, however, has been a bit controversial. It is said that associations have their own rights and duties, but none against the State. Modern associations are tending to be so powerful as to become international in character, and their changing nature may thus destroy not only liberty of individual but undo the foundation of political organisation. Some profess the provision of enough and adequate safeguards against the ever-increasing power and authority of associations, while others say, that "the State is only one among the many forms of human associations, and has no superior claims to the individual's allegiance." Whatever may be the controversial points, we cannot decline the supremacy of State as a sovereign political body, regulating the affairs of the political community.

The same partially holds good so far as right to boycott, strike, and picket is concerned. There is no reason why a State should not tolerate peaceful persuasion which is in every way justifiable. These collective actions of the individuals emanate out of the present industrial organisation and have at their roots social, economic or political reasons. Whatever may be the objectives, if pursued on a large scale, with persuasion changing into intimidation and molestation and with the transfer scene from a social cause to social disease, there is a great doubt regarding the efficacy and usefulness of these weapons. Ordinarily few restrictions are placed upon this right and it is better that States should minimize the dangers implicit in these concessions by reforming the socio-economic structure of the community thereby leaving no room for people to boycott, strike and picket.

Right of Association

Right to Collective Action

This is a very recently recognised right and all States follow a policy of tolerance so that people belonging to all religions, sects, castes, creeds live peacefully under the domain of a single political authority. Rousseau believed that tolerance should be given to all religions that tolerate others, so long as their dogmas contain nothing contrary to the duties of the citizenship. "Every religion or creed in a particular State has its own organisation. That does not mean that they are legally supreme over the lives of their members. Religious associations are one amongst the many and State is at the apex of all these associations but it is only when the actions of the individual members of any particular religion or sect become dangerous to the public safety that the State intervenes. On the other hand by virtue of their supremacy in social order these religious institutions perform services of great importance in cultivating a spirit and capacity for idealism which the State's work needs but cannot give. Naturally they enjoy a privileged position as distinguished from other associations and are given protection and encouragement by the authority of the State. Religious meetings are allowed and various concessions are made to prominent religious personalities. Now, if right to express, propagate and follow one's own religious beliefs is allowed within limits, the right or freedom of conscience has not as yet received a world-wide recognition because of the various difficulties that creep in. It is quite reasonable to say that one should be allowed to follow his own path of life according to his inner voice or conscience. But who can tell but the possessor that the inner voice is conducive to the well being of social order? "All consciences do not speak alike" and if allowed to take their own courses the entire social order would totter down to pieces and hence the need of body-politic that would represent the intelligentsia of the community laying down the policy safeguarding the common interest of all in the community. No doubt individuals are able to decide and distinguish between what is good and what is bad but as soon as the inner conscience tries to materialise, the supreme authority of the State must interfere to regulate the outward actions of the individual as they are bound to affect the peace, order and tranquillity of the community.

If we consent to the fact that the State is a voluntary political association of individuals emanating from amongst themselves with a view to achieve certain specific purposes, then that sovereign power presupposes rights and is an orderly organisation for their maintenance and protection. If

Right to Disobey

this view of rights is accepted, rights do not belong to the individual members of the community as they might have belonged in a State of nature but they come to them as members of a society in which each recognises the other as an originator of action in the same sense in which he is conscious of being so himself and thus regards the free exercise of his own powers as dependent upon his allowing as equally free exercise of his powers to every other member of the society. The question naturally arising is, can the members of the political organisation act otherwise than as members of that State or in other words are they to obey the law implicitly without any least reference to its contents and have no right to disobey? It can be said that so far as the laws anywhere or at any time in force fulfil the idea of a State there can be no right to disobey them or that there can be no right to disobey the laws of the State except in the interest of the State. State is a society of societies, a form which society takes in order to protect rights. Naturally individuals cannot have any right against the State, because existence of such a right would be an impossibility as it would be a right against the well-being of an established social order. Rights emanate from the association of individuals and society if regarded as the widest and most complex of all associations, to say that an individual is a member of society is tantamount to saying that he is also a member of State and when States assume such a supreme importance, the other associations work only inside the State, become its organic members. The conclusion therefore is that the independent or natural rights which individuals derive by being members of these social institutions also depend upon State for their existence, maintenance and protection.

Now the membership of the individual of a political organisation confers upon him certain powers which he regards as his rights, provided their exercise does not affect social good.

Any interference with regard to them is naturally regarded by him as a violation of his rights. But these rights as said above come to him through his membership of society but if the test of social good is the condition precedent to the grant of these rights, the State may interfere with it "upon new conditions arising or upon elements of social good being taken account of which had been overlooked before or upon persons being taken into the reckoning as capable of participation in the social well-being who had previously been treated merely as means to its attainment." Naturally in these cases also individuals have no right against the State because right against society as such is an impossibility.

Our conclusion is therefore that if State is regarded as the harmonizer and regulator of social relations, the individual can claim no rights against the state and the law of the State must be to him absolute and authoritative. He has no rights against laws of the State which are well grounded and established, founded on any right to do as he likes.

Every State constitutionally established and democratic, provides ways and means for the repeal of bad laws. Still it is the duty of the individual to conform to bad laws till they are repealed. But when there is no legal or constitutional way of changing or repealing the bad law individual cannot be said to have any right to resist, but in such extreme cases it is his painful duty to resist, when all other possibilities other than resistance have exhausted and the leader of such a resistance movement should place before himself the following consideration : (1) Have I exhausted all constitutional methods of bringing about the desired change ? (2) Are the people whom I call upon to resist keenly conscious of a flagrant wrong done to them or am I simply exciting their passions ? (3) What about the character and temper of the people with whom I have to deal ? for once resistance is started there is no knowing where it will stop. (4) What about my own character ? (5) What about the consequences ? Is the second stage likely to be worse than the first ?

All these considerations point to the fact that revolutions as such are times for action and before the final stage of success is attained there may be repeated attempts and repeat-

ed failures. Moreover it can also be said, the majority cannot resist because of its majority ; it may be that even a helpless minority may often be called upon to resist without any prospects of chance. The success, whichever side the individual may take, depends upon the pureness of character and sanctity of head and heart on the part of individual, which only would yield the best of the results.

It is said that the long history of human civilization on its material side centres in the idea of property and ownership.

(iii) Right to Property This notion of property or acquisitiveness is instinctive with man and it can be described as the control of man over things or an appropriation of material objects recognised

by society. It is in the possession of exclusive control over and power to use things that the right of property consists ; and it is said that man will not be able to contribute his own to the advancement of society if he is not given freedom to enjoy and use his property freely. Like all other rights the right to property, to become valid, requires social recognition and sanction. It is said that the institution of property as we see it today is the result of a common endeavour and co-operative effort. But today property means power and the utilization of that power has been to control freedom of others. No doubt to the owners of property it spells freedom but on the other hand it gives them extensive and wide powers over the lives and destinies of human beings. It has meant economic exploitation of the masses and abhorptive use of their power. Considerations of justice and morality emphasise the placing of limitations upon this unrestricted use of property. The tendency among modern States is to socialise some aspects of communal life and it means a definite limitation upon the right to property which has confiscated its claim, to be recognised by society.

The right to family implies a respect for personality. Under modern conditions the State regulates marriage and divorce and enforces certain obligations regarding the

(iv) Right to Family family in general but it leaves a considerable freedom to the members of family to regulate their own relationships, because it is in a congenial family atmosphere that the child takes the elementary lessons of citizenship and the environments that surround the

child develop the personality of the child by impressing and influencing its mind. It is again in the family life that the manifold aspects of human personality manifest themselves and unless the right to family life is recognised, full growth of man cannot be conceived of in an unregulated life.

There is an increasing tendency today to recognize only permanent monogamous relations which are regarded as best in the interests of the well-being of children, of public morality and of social unity and solidarity ; and even though divorces are granted, morality for all demands that they should not be made cheap and easily accessible except for very serious reasons.

Moreover today in the family the head of the family is not the absolute monarch as he was before. The State has taken over many of the functions formerly enjoyed by the head. It is in the nurseries of State that children are brought up and then they are provided with free education by the authorities of State. It is in the atmosphere of State-house that they take their lessons in morality. These tendencies have no doubt created an adverse influence on family life and in the future all the members of society may reside within the extensive territorial boundaries of State family if only the existing social moral and environmental values give way to other standards of life.

Political rights are possessed by those persons whom the State permits to share in the legal expression and administration of its sovereign power. Individuals can exercise those rights by acting in the capacity of voters or serving as the officials in the machinery of the Government of the State—
Political Rights —Universal Franchise Universal franchise is deemed as a condition precedent to democracy. They are usually regarded as the creations of the constitution and the laws of the State and the citizens look upon them as their privileges.

Whenever these rights are diffused widely it is said that the Governments of these States are Democratic. Naturally political liberty is practically synonymous with Democracy. The extensive areas and vast populations of modern states make the introduction of direct Democracy — where
Political liberty and democracy

people actually participate in expressing the State's will—impossible. But the devices like initiative, recall and referendum have made even direct Democracy possible to a certain extent.

States impose limitations regarding the persons who shall possess political rights and the extent of such rights for reasons of expediency and efficiency. Naturally

Who enjoy the political rights equal political rights for all are not possible. Some persons are excluded from the enjoyment of political rights and within the category of those who enjoy political rights some have a larger share than others. "The problem of the State in creating political rights is to secure an organisation in which legal sovereignty will coincide as nearly as possible with political sovereignty, in which as many persons as possible may possess political rights as nearly equal as possible without destroying the efficiency of the Government and in which general public opinion may be made into law without tyrannizing over those who hold different opinions. Democracy is not an end in itself but a means to individual and social welfare ; and political rights are for those who are able to use them wisely."

4. *Safeguards and Guarantees for the Rights.*

Assuming that the individual as a member of a political organisation enjoys certain rights which imply certain duties and counter-obligations on his part, it is absolutely necessary that these rights should be protected, safeguarded against the likely interferences from other individuals or associations of individuals and the Government of the State itself. A well organised State makes sufficient provision against both these kind of interferences. As against the interferences from individuals, the organs of Government, the police and the court which put into force and execution the laws of the States and guarantee the rights of individuals against such an encroachment. These organs playing the part of arbitrator without becoming a party to controversy regulate and adjust the relations of individuals. In fact, State primarily arose with this sole purpose only. "Further development in this field consisted in making such rights more definite, in making Governmental enforcement of them more certain, and in

extending equal rights to all classes in the State. Definite law, sure enforcement and equality before the law marked the advance of civil liberty in the relation of man to man."

Originally when State came into being and when it was supposed to have a divine sanction, there was no question of political and civil liberty or freedom. The individual will was crushed under the laws of State and rulers became despotic in placing all the activities of man under the firm control of State will. It is only with the rise and growth of constitutional State that a particular field was demarcated as of individual action where the hands of State could not always and usually reach. It was the constitution or public law of the State that provided safeguards against the interference from the Government. Modern States place certain restrictions upon their activities by means of a constitution, written or unwritten which determines the principles of State organisation. Naturally the liberty, right or freedom which the individual citizens enjoy are protected by means of a 'bill of rights' in the constitution against the interference of various organs of Government.

Merely a provision in the constitution, in the like manner however cannot be regarded as a just and enough safeguard. If the constitution can be easily amended by regular law-making body the guarantee remains only on paper and there is every danger of the violation of fundamental principles of constitution by Government itself. The safeguards therefore become adequate only when the constitution is amended by a special body or by special procedure. It must however be admitted that individuals enjoy civil or political rights against individual interferences of organs of Government but so far as government's position is concerned, it possesses the legal power and "it may if it chooses destroy or limit all civil rights" as often practiced during national crisis.

5. *Provision of Fundamental Rights in the new Constitution of India*

The Constituent Assembly of India completed its work of passing the constitution by the 26th of Nov. 1949 and as a result a new era of social and political life has dawned in India. Now we are a sovereign democratic republican nation and will have the privilege to take our due place amongst the

other free nations of the world. That historical day onward the entire population of India will have adult franchise, civil liberties, equality before law and opportunities of justice according to the law established by the constitution of India. There will be no more distinctions based on caste and creed. The age old discriminations towards the 'untouchables' will be abolished and the law of the country will not tolerate the arbitrary treatments to different sects, religions and dogmas. All this has been provided by the statute of Fundamental Rights in our new constitution.

All countries have their constitutions which provided a marked clue to the relations between the people, the Government and the State. All constitutions of the world provide certain fundamental rights for the citizen with a view that they can attain all round progress and at the same time can remain loyal to the State. These fundamental rights are considered essential as contributing to the development of the potentialities of the citizens ; over and above this they are regarded inevitable to make a citizen of a man. These rights promote and maintain equality amongst all citizens of the state irrespective of position, possession and power ; over and above this they play a prominent role in enabling the citizens to enjoy, defend and enhance their freedom.

The first and foremost right that the citizens of India will enjoy is the 'right to equality.' India being a country whose invidious distinctions based on castes, creed, religion and property are rampant, inequality between citizens rules supreme, which usually results in inequality of opportunities. The children of the highly-placed, of the rich, of the powerful usually find an easy ladder to high positions and material advantages while the children of the low born, of the poor face a steep slope to unemployment, frustration and misery. With a view to combat this and formulate some ground of oneness, equality and common aspirations, the new constitution provides the citizens one and all with a legal claim to equality in various spheres of social life.' Henceforth "the state shall not deny to any person equality before law or the equal protection of the laws within the territory of India." Moreover, "the State shall not discriminate against any citizen on grounds only of

Right to Equality

religion, race, caste, sex, place of birth or any of them." All persons shall have equality of opportunity in matters relating to employment or appointment to any office under the state. The most outstanding feature regarding the right has been

Untouchability Abolished the total abolition of the heinous practice of untouchability. This opens a new phase of life for our hitherto mistreated brethren

who live a subhuman and suppressed life throughout the country and whose uplift had been the major mission of Mahatma Gandhi. Titles as well have been abolished and citizens are prohibited from accepting them from foreign governments while the State shall not confer titles except in cases of military and academic distinctions.

All citizens of India shall have the right to freedom of speech and expression, to assemble peaceably and without arms,

Right to Freedom to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to acquire, hold and dispose of property, to

practice any profession or to carry on any trade, business or occupation.

No person shall be convicted of an offence except for violation of a law in force at the time of the commission and he shall not be subject to a penalty greater than that in force at the time of the commission of the offence and no person shall be punished twice for the same offence. Moreover no person shall be deprived of his life or personal liberty except according to procedure established by law.

Another milestone has been the protection against arrest and detention in certain cases as provided by the *Habeas corpus*. Accordingly an arrested person shall

'Habeas corpus' not be detained in custody without being informed, as soon as may be, of the grounds for detention. He shall have a right to consult and have himself defended by a legal practitioner of his choice. Moreover, every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours.

The Rights Against Exploitation include the prohibition of traffic in human beings and forced labour and prohibition of employment of children in factories, mines or any other hazardous employment.

All citizens have the right to profess, practice and propagate their religion and are equally entitled to freedom of conscience. Moreover, any religious denomination shall have the freedom to manage their religious affairs. This right emphasises the

Freedom of Religion

secular nature of our State wherein no one religion shall have to suffer either at the hands of any other religion or the State. The further extension of this right provides for the

Cultural and Educational Right

preservation and safety of various cultures. Any section of citizens residing in India and having their distinct language, script or culture shall have the right to conserve the same.

A citizen shall not be denied admission in any educational institution maintained or helped by the State on grounds only of religion, race, caste, language etc. All minorities based on religion or language shall have the right to establish and administer educational institutions of their choice.

The citizens of India shall have the right to private property. No person shall be deprived of his property save by authority of law and such law must provide for compensation for the property taken possession of or acquired.

Private Property

The last but not the least right to constitutional remedies has a greater significance for the people of India, who are socially and politically backward. It is likely that our newly won freedom may be tampered with by people in power. It is likely that frequent ordinances like the current Central

Right to Constitutional Remedies

Detention Act may be the order of the day when the party in power may be blind to any toleration whatsoever for the opposition parties. All this may result in the complete curtailment of the fundamental rights and liberties of the people. The right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights is guaranteed and it is likely to serve the Indian citizen

as the magic lantern that will lead him to a state of liberty, unhampered and unchecked by the shallow stalwarts of democracy who per chance may occupy the seat of power in the early stages of our juvenile State. Eternal vigilance is the price of liberty ; and this right vests the Indian citizen with the power to be vigilant.

No Right to work, to education and to adequate wages and conditions of work

Though the right to work, to adequate wages and to adequate conditions of work, and right to education have been conspicuous by their absence, it is liberally mentioned in the Directive Principles of State policy that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

CHAPTER IX

CITIZENS AND CITIZENSHIP

1. *Who is a citizen*

Centuries ago Aristotle discovered the fundamental truth that no Government, however good and sound it may be, can succeed unless the people who are the inhabitants of that State, possess sound character, temper and good spirit of citizenship, who share in the State and which calls for passion and devotion to the State. Aristotle defined citizenship as the capacity to rule and to be ruled and to the Greeks to be a good citizen was practically equivalent to be a good man. Citizenship was therefore confined only to responsible members of the community who enjoyed legal privileges to the exclusion of the majority of toiling masses, who were denied civic rights and privileges. The idea of modern citizenship is universal, all inclusive and creative, and today citizen is one who is a member of a State and tries to fulfil and realise himself fully within it along with an intelligent appreciation of what should conduce to the highest moral welfare of the community. "They are the people who compose the State and who in their corporate capacity have subjected themselves to State for the protection of their individual as well as collective rights. Modern citizenship includes every member of the community irrespective of his sex or residence. He is not only obedient but he knows the value of the spirit of freedom. He is not merely a passive instrument in the hands of the Government but he is always vigilant to guard those conditions of life so essential for the development of State and thus lives up to the ideal which he himself has set up. To him citizenship becomes an art as well as science, not only to be learnt but to be practised assiduously. It becomes wider and deeper and culminates into patriotism. He recognises that citizenship calls for a steady, continuous, devoted intelligent and often unnoticed and unrecognised service in both small things and big, to one's

neighbourhood, one's country and eventually to humanity itself. Citizenship in the widest sense of the term is a unifying force bringing together man and man, nation and nation in a world-wide unity. It is in this sense that citizenship beginning from family spreads to the neighbourhood, the village, the town, the country and humanity at large. A good citizen therefore recognises the value of loyalty to each and everyone of these groups and therefore citizenship means right ordering of loyalties. "A good citizen ought to be a good father, husband or brother, a congenial and useful neighbour, a loyal and intelligent patriot, a faithful worker, a lover of the poor and down-trodden and an ardent lover of international peace and goodwill."

2. *Hindrances to good citizenship*

In political as well as public affairs intelligence, alertness and vigilance are supreme factors to assure success, at the same time the service which the individual renders may go unnoticed and unrecognised and naturally he may think himself to be a drop in the ocean, one among millions with no power to influence national issues. This increases indolence and negligence on the part of citizens. Not only they become indolent and lazy in action but also in thought. They fail in their duties and become disinterested and indifferent spectators about political affairs.

Moreover self-interest which urges the individuals to subjugate interest of the community and neglect public duties is the greatest hindrance to good citizenship. Naturally this leads to corruption and bribery, adoption of various dubious devices to capture votes, evasion of primary duties of citizens. There is general degeneration in political life which easily paves the way for dictatorship or mob-rule.

Another factor that is inimical to good citizenship is excessive party zeal. No doubt party system is the life blood of Democracy in that it tends to create, mould and thrive public opinion but these objectives become reality only when parties are organised and based on legitimate principles. But parties often degenerate into factions and private cliques. Naturally party interest predominates national interest and harms the national cause. Citizens instead of becoming

loyal to the State tend to become loyal to party principles and forget their duties to the State as citizens of the State.

3. *Removal of the Hindrances*

Various ways have been suggested to remove the total apathy, indifference and disinterested attitude of the citizens. It is said that uneducated masses are the poorest material out of which ideal citizens could be carved out. Universal education therefore is a necessity in a Government of and by the people. Good citizens are not expected to come out of their constant subjection to autocracy of the past and obedient mentality. What is necessary is training in self-Government. "The habit of self-Government is the best training for Democratic Government in a nation." Practice is needed to verify knowledge. Further social injustice, unmeaning equality, gross discrimination and political favouritism are sure to sap the vitality of citizenship.

Again what is necessary is proper home training. In the happy and ideal home are cradled and nursed the virtues of character, generosity, co-operation, broad-mindedness, so essential to make a good citizen. Family has been described as the great agent of discipline through which each generation learns anew the lessons of citizenship. School occupies an equally important place with family. Schools which train pupils for "social living encourage co-operative methods and group ideals, mould character and instill a legitimate national pride and national spirit." Competent citizen is based on at least an elementary knowledge of history, and sociology, economics and political science, especially those phases thereof that illuminate the problems of the particular citizen. Moreover a person's right to earn a living is recognised but his economic interest should not be allowed to crowd out his political functions and every one should bear in mind that the ultimate aim of industry is social service. Industrial values should not be allowed to kill the values of those human relations which should exist in home, churches, schools, neighbourhoods and communities."

The press, the platform should play a vital part in inculcating the civic virtues in citizens and should emphasise the ideas of order, progress, service, freedom, justice, co-operation, national unity and pride, international peace and security.

The three essential qualities of good citizenship are commonsense, knowledge, and devotion. A citizen should take a wider survey. He must connect the past with the present and the future with his feet in the road of order, he must turn his face towards progress. He should take an oath to himself that "I will not bring dishonour upon my arms and I will not desert the comrade by my side. I will defend the sacred places and all things holy, whether alone or with the help of many. I will leave my native land not less but greater and better than I found it. I will render intelligent obedience to my superiors and will obey the established ordinances and whatever other laws the people shall harmoniously establish. I will not suffer the laws to be set aside or disobeyed, but will defend them alone or with the help of all. And I will respect the memory of fathers. The Gods be my witness."

Besides these remedies various other mechanical remedies are suggested which seek to remove the defect by introducing changes in the machinery and organization of Government. It is said if the system of proportional representation is followed, all parties will be represented according to their numerical strength and legislature will become mirrors of the nation. So that when majority party tends to become a bit perverted and tyrannical the minorities will rise up to the occasion and will not allow national cause to suffer. Moreover introduction of the system of compulsory voting will help in overcoming the apathy and indifference of the citizens. However the efficacy of this device will depend upon how citizens use their votes.

Initiative and referendum have also been suggested so as to stimulate individuals not only to think but to decide questions of public interest. This will result in creating a keen interest and a sense of responsibility in the minds of citizens. "Strict election laws, purging of corruption and rigorous punishment for breaches of public trust may also act as effective checks on the hindrances to good citizenship."

4. *Aliens and Citizens*

The population of modern states consists of citizens and aliens. Aliens are foreigners who owe their allegiance to a foreign state whereas citizens are members and owe their allegiance to the State in which they reside. The citizens are subject to the laws of the State and enjoy civil and political rights as well. Whereas the aliens who may be temporary or permanent residents enjoy only civil rights but they enjoy the right of protection equally with the citizens. The alien has a right to sue and to be sued, has a right to education and freedom of conscience and in case the authorities of State are negligent in their attitude towards the alien he may take recourse to diplomatic interposition through the representative of his Government in the State concerned. However he has no right to vote or to be voted for. We thus see that in respect of civil rights he enjoys an equal status to that enjoyed by the citizens but certain disabilities are attached to the aliens in respect of political rights and many States may restrict the sphere of activity of Aliens by expelling them or refusing to them the right of entry and also by not allowing the aliens to be owners of any real property. However it shall be noted that aliens are not liable to conscription into the military services.

With the advance of time certain restrictions upon the enjoyment of any rights are fast disappearing. The sense of moral justice does not permit a distinction made in the enjoyment of fundamental rights as between man and man only on the grounds that one is an alien and that other is a citizen. Naturally the disabilities placed upon aliens in historical times are being removed and today aliens enjoy unrestricted civil rights. Only the political rights are withheld from them.

Even though it is possible for us to say that aliens owe a permanent allegiance to the state of which they are citizens, the fact that as long as they are living in a foreign state they are under the complete authority of that State, makes possible the conclusion, that they owe temporary allegiance to the State of residence. They must obey the law of that State and suffer in case of violation. They must pay

taxes equally with those of the citizens and in case of the alien being defrauded, the machinery of justice must be open and accessible to them as much as it is to the citizens. Modern international law lays down that if the alien suffers on the ground of his alienage then the State of which he is a citizen can interfere. In all cases, otherwise, local laws and procedures are equally applicable to aliens as they are to citizens. It would not be wrong to say that International law today largely regulates the position of aliens.

5. *Acquisition of Citizenship*

Citizens are either born or naturalised. Naturally there are two methods of acquiring citizenship : (1) acquisition by birth or descent, (2) acquisition by adoption or naturalization. The citizens who acquire citizenship through birth are called natural born citizens, and citizens who acquire citizenship through adoption are called naturalised citizens.

There are two principles governing the acquisition of citizenship by birth : (1) Jus Sanguinis and (2) Jus Soli or Loci.

Jus Sanguinis and Jus Soli Principles In the first case the nationality or citizenship of the child follows that of the parents or of one of them, wherever it may be born. The child of an American citizen will have American citizenship even though its birth-place may be Great Britain, if this law is followed. In the second case, it is not the citizenship of father that is the deciding factor but the place of birth. A child born of Indian parents in America will according to this principle be the citizen of America. No one country adopts similar practices and there may be a problem of double nationality. For instance the French law follows the first principle and the American law follows the second principle, now the child born of French parents touring U. S. A. will be considered as French citizen as well as an American citizen. To solve such problem two means are adopted. Firstly the State does not claim the citizenship of one who is not within the jurisdiction of that State and secondly states allow a person residing within their political boundaries, to choose their nationality on attaining their majority.

The Jus Sanguinis principle seems to be more logical because that the child should follow the nationality of his father is quite natural but defective because there may be practical difficulties in proving the parentage of a person. In this defect of the Principle lies the claim of the Jus Soli rule, it is very easy to ascertain the place of birth. But at the same time the rule is illogical because it makes citizenship dependent on mere accident of birth in a particular place and storms the idea of citizenship from political allegiance and cultural affinity of the parents of the child.

Merits and Demerits

6. Acquisition of Citizenship by Adoption or Naturalization

Citizenship may be acquired by (1) Birth within a place subject to the jurisdiction of the State including an embassy in a foreign country or through inheritance from a citizen father or (2) Direct grant or conferment of the State or (3) Indirect grant or recognition of citizenship through other modes, such as marriage, legitimation, adoption, purchase of real estate, long residence in the country, entrance into the public service of a State and the political incorporation of a foreign territory.

Naturalization in the wider sense therefore would mean the formal act of bestowing citizenship on an alien in any manner as stated in clause three above. Naturalization in the restricted sense of the term may mean the granting of citizenship by a court or an administrative officer after the fulfilment by applicant of certain prescribed conditions as stated in clause two above. "This is naturalization proper or grant of citizenship on application".

The conditions which must be fulfilled by the applicant for the naturalization differ from State to State. The conditions to which importance is attached are (1) a period of residence within the jurisdiction of the State. The period of residence however varies from State to State ; (2) the declaration of an intention to become citizen ; (3) taking of an oath of allegiance at the time of admission into citizenship ; (4) possession of good moral character ; (5) security that the applicant and his family shall not become a public charge.

Terms for Naturalization

When an alien becomes a naturalised citizen he is invested with all the rights of a natural born citizen and then and then alone naturalization becomes complete. Such

Complete and Partial Naturalization a citizen is entitled to all political and other rights and privileges and is subject to all the obligations to which a natural born citizen is subjected. In case when such naturalised citizens are excluded from certain privileges that the natural born citizens enjoy, for instance holding of high post, or do not enjoy the same rights as those of the natural born citizens, the Naturalization is partial or ordinary.

One loses his citizenship in a variety of ways. A citizen may voluntarily withdraw his right to be a citizen of the State of his origin and may adopt the naturalised citizenship rights of the other State. Most

Loss of Citizenship states do not put any kind of hindrances in the way of renouncing the citizenship of a State. "Any declaration, instruction, opinion, order or decision which denies, restricts or impairs the right of expatriation was incompatible with the fundamental principles of this Government (U. S. A.)."

Again acceptance of any post or decoration and honours under a foreign Government without the permission of the Government to which the person concerned owes political allegiance may result in the forfeiture of citizenship of the citizen concerned.

Similarly a person who deserts from the military or naval service is denationalised and judicial condemnation for major offences also lead to the loss of citizenship.

Moreover a woman may loose her citizenship by marrying a person of different nationality even though at the same time she gets the citizenship of her husband.

"The process by which a citizen who has been naturalised abroad may be readmitted to citizenship is called reversion of nationality, repatuation and reintegration.

Reversion This may be effected in France and Belgium by returning home and making a formal declaration of intention to reside there, and by establishing a domicile. According to the British and American laws a

citizen naturalised abroad may resume citizenship only by following the mode by which an alien is naturalised."

7. *Duties of Citizenship*

When we observe that collective happiness does not always seem to make for personal happiness and what is sound in the collective life is that which completes the personal and carries it on to a higher harmony of wide sweep, we are attributing something to the individual which really belongs to him as a member of society. This in no way places individual on a higher plane but implies the fact that the interest of individual and interest of society do not come in conflict with each other. If the aim of individuality is the development of its own personality, society advances this cause by creation of favourable circumstances. Naturally there is nothing such as personal achievements independent of social organisation because nothing is possible without the organised force of the community and the rule of law. This means the right of a person of doing anything or thinking, acting or expressing himself in a particular manner is really his social claim and not as if it was the part of his skin or one of his limbs. The right of an individual implies a corresponding duty upon him though we may regard right as a conception of a reflective jurisprudence and duty of reflective ethics. But a right, whatever else it may be, is one form of an obligation and when it is recognised, it is to admit an obligation in respect of it. Rights and duties understood in this sense are universal because when one individual recognises the right of another he is thereby consenting to respect the right of that another man and observe certain duties. In the same way that another man is also under the obligation of paying due regard to the rights of that one individual and consenting to preserve his right by observing certain obligations or restraining his behaviour in that respect. It is in the observance of and obedience to this principle of mutual understanding and exchange that the greatest amount of social welfare could be attained. It is as if the community has made a bargain and it is not the disrespect but honourable observance of this bargain that real public welfare depends upon. Rights and duties are then conditions of social welfare. To

this welfare every member of the community stands in a double relation. He has his share in it. That is the sum of his rights. He has to contribute his share. That is the sum of his duties. Rights and duties thus rest on the same ethical foundation. The fulfilment of each personality is a constituent element of the common good and the individual may justly claim the conditions necessary to it, the forbearance of others and their aid in so far as the general conditions of community allow. However it is impossible to know accurately all conditions of common life and it may happen that rights and duties may come into conflict with one another. It must be remembered in this connection that no rigid and fixed rules can be formulated which will regulate human conduct. No doubt rules have arisen prescribing the duties and assigning the rights that arise in given relations or in given conditions. But this does not mean that there are no chances of inconsistency. Whenever we find inconsistency, adjustment is necessary and that adjustment must continue until we evolve a system where all parts are harmoniously working together. This is not any universal rule upon which the conditions of social welfare are based, but the rule of expediency. Rights and duties then are not conditions of limiting the common good from without but conditions constituting common good in the varying situations of life and the intermingled relations of men.

It is only on this background that the real implication of rights and duties, the two conceptions which are most closely connected with the everyday life of all the citizens, can be understood. Rights imply duties, both are correlative and interdependent, even though superficially they seem to be in sharp contrast with one another. Both of them far from being so are the resultants of the social nature of man and are deep rooted in his social consciousness and social relations.

Rights imply Duties

When the rights are thus created by a society politically organised and maintained and protected by the force of law, in conceding such a right upon one individual, there is implied an obligation for others who cannot violate or interfere with that right. It is in this observance of the right that a negative-duty is implied. This means that each and every citizen should not restrict his activities to the safeguarding of his

personal interest alone but should also extend his helping hand to others. This principle is essential to the welfare of all and to the greatest good of all. The rational nature of man involves this other regarding tendency as the highest principle of life. Naturally what we demand as a natural condition so essential for the development of personality, we cannot deny the same conditions to others if demanded by them. Hence rights imply corresponding duties.

When we accept the fact that the rights emanate from the social nature of man, the functional nature of rights is obvious and inevitable. Rights are to be used not for securing personal pleasure and joy ; not in a manner to promote and safeguard one's own interest and claims alone. Rights are

Rights are functional

the conditions for the promotion of social and collective welfare, they are not to be used as one likes in order to satisfy personal whims and caprices but have a higher ethic and an essential political purpose behind them. If rights are essential for the development of human personality they are to be so used and in such a manner that greatest social welfare and happiness will result thereby. "We are given powers that we may so act as to add to the functions of our social heritage. We have rights not that we may receive, but that we may do." Rights thus are a means to achieve further social good. This implies the correlation of rights and duties. Rights attain fruition only when they ripen into duties."

Thus we see that rights and duties move together. They are so mixed up with each other that it is impossible to think of one's existence without that of the other. They are component parts, different aspects of one and the same thing viewed differently.

The duties of citizenship therefore imply the fundamental and universal truth that as members of a politically organised society the totality of those circumstances essential for life are the resultants of the actions and interactions of all individuals. The one who knows this truth and outlines his life according to this conception of common good is the real citizen. He recognises the fact that not only he must

Essence of Citizenship

cheerfully perform all these duties which are legal in the sense that they are imposed upon him by the fact of his being a member of a State but also those moral obligations which he is not forced to perform.

Obedience to law can be regarded as the primary duty of citizenship. Law regulates the outward actions of the individual and without the strict enforcement of

Obedience to Law law by the State and its peaceful obedience by the citizens, order and progress will be impossible. The duty of the citizen is to

obey law and persuade others to do the same. Even in case of a bad law, the citizens should not take law in their own hands which may lead to anarchy and confusion. His duty will be to bring the full pressure of public opinion to bear upon the Government for the repeal of that bad law.

Another duty of the citizens is unblemished and uninterfered allegiance to the State of which he is a citizen. In case

Allegiance to the State the country is invaded by aggressive forces of a foreign nation, there would be conscription by the State and he should defend his country against such an aggression and should

go to the extent of even sacrificing his own self to the cause of nation. However, in case of an aggressive war waged by his state against another, there is often an inevitable conflict between the conscience of the individual and orders of the Government. The individual thinks that his behaviour in not participating in such a war is justified by a higher sanction superior to the wills of States. "In all such cases of conflicta thorough searching of the heart is necessary." Besides this duty of defending one's country the citizens are also under the obligation of helping the police and other legally constituted authorities—viz., by becoming members of a Jury when called upon to do so in the maintenance of internal peace, order and security. What is necessary on the part of all citizens is not a differential, disinterested and apathetic attitude, but a tendency to co-operate with the officers of Government whole-heartedly. The duties of the citizens do not end here. Holding of public office can be regarded as an important duty and he should take it as a sacred trust. It may not happen that he will be paid well and sumptuously and often it may involve a great amount of personal sacrifice which

may go unrecognised and unrewarded. The citizens should not take these points into consideration but should always come forward in the willing discharge of these duties even at considerable personal sacrifice.

In modern times, the growth of political consciousness on the part of the members of the State is regarded as an important factor in maintaining the unity and solidarity of the political organisation. In all such states all citizens, both men and women, above a certain age possess the franchise or right to vote. The duty of all the citizens is the exercise of their franchise. It is only when all citizens participate in the general elections that Government becomes truly representative, representing the general will of the people. It proves a restraint upon the Government which is afraid of popular discontent and disapproval and it really makes a good Government possible. Franchise here becomes a right as it means indirect participation in the exercise of the sovereignty of the State and a duty also, the abstinence from the exercise of which would make it easy for partial and factional tendencies to predominate.

Moreover in the discharge of its functions which are manifold Government has to incur considerable expenses and it can be said that no Government can work efficiently, intelligently and effectively without proper resources in terms of money. It is out of taxes that Government levies upon the citizens that this expenditure is met. As the welfare of the community depends upon the happiness of rich as well as poor, the rich and the powerful should not evade taxation. It means making the Government practically inefficient and leaving the poor, more poorer as taxes would eventually fall upon them.

The willing observance of all these duties can be regarded as the essential and primary duty of citizenship and any disregard on the part of citizens would cause great injury not to his own person alone but to the State of which he is a citizen. The interest of the State embody the interests of its citizens because the individuals constitute the State. The well-being and progress of State ultimately means therefore the well-being and progress of its citizens.

CHAPTER X

LOCAL SELF-GOVERNMENT

I

The extensive territorial boundaries and vast population of modern States create such a complexity in the Governmental functions, that it is beyond the power of Central Government to control and regulate the affairs of distant localities efficiently. Naturally territorial divisions are carried out and the affairs of those local divisions are governed by local institutions established specifically for that purpose, whereas the Central Government looks after social affairs having nation-wide applicability and other such functions essential for the maintenance of peace, order and well-being of the State. The fulfilment of these functions necessitates a wider outlook, humanitarian ideas, and deep knowledge of the fundamentals of Government. Still, however, the importance of local institutions is not in the least lessened because in it there is a personal and direct touch and, therefore, the citizens of that particular area feel duty-bound due to the strong and effective appeal.

The difference between local and Central Government is not a matter of area or of population. The distinction lies partly in their relative constitutional positions, and partly in the respective nature of the public services performed. In regard to the first point, it is true of more independent states that the local Government derives its powers from the Central Government and holds them at the pleasure of the latter.

The other point of distinction between local and central Government consists in the different nature of the services accomplished. The various functions performed by the agencies of the State for the benefit of the citizens will roughly fall into two classes. Some of them will be in the interest of the community generally and the benefit thereby effected will not be assignable to any single part of the country. The

whole class of functions thus indicated will properly fall within the province of the central Government. But in addition to these, there are other State activities of quite a different character. Here the benefit to be conferred affects only a small portion of the community and is obviously assignable to a particular area. Here it seems reasonable that the advantages, the cost and the control of the enterprise should be looked upon as solely the concern of those who are affected by it.

The nature of functions of local bodies is therefore easily understandable. They are to provide "such tangible utilities as are of general benefit in a particular area and indivisible among the separate citizens. "They are to secure and ensure public health and safety by maintaining conservancy service, good drainage system, clean roads, by taking utmost precautions against the infection and spread of diseases through food and water. Within their financial resources they should provide an organization against fire and maintain an effective local police force. They should indulge and concentrate their attention on town planning which would include broad and metalled streets, public parks and gardens. Not only the towns should be the centres of beauty but also the centres of healthy atmosphere. They should also conduct charitable and cultural institutions like schools, hospitals, asylums, etc.

The presence of villages offers a very marked contrast in the organisation, structure and functions of the local bodies in towns and villages. The problems of villages are more pressing. The amenities afforded by modern sciences are easily available in town and city life, and civilizations and cultures have been cradled in the nurseries of city life. Not so with villages. There the question is of rural or of village uplift. Naturally the functions of these local bodies will be to provide compulsory and free education for all, construction and maintenance of the means of transport in a way to connect villages with towns. They are also to provide medical facilities and offer advice with respect to various village industries especially, agriculture. Propaganda by way of radio, cinemas, libraries,

circulating museums would contribute immensely to the cultural and mental development of the village folks.

The necessity, therefore, for the creation of local Self-Governing institutions is immense. The central decision may

Merits of the Local Self-Government

be arbitrary and may not coincide with the needs and conditions of local problems. There is bound to be an inefficiency in administration. The people inhabiting a particular locality are thoroughly acquainted with local affairs, customs and aspirations of their own people hence self-Government in this respect would be useful in enhancing efficiency.

It will also relieve the burden on central finances. It is quite just and reasonable to say that the people on whom the

Efficiency and Economy

benefits of a particular act are conferred should bear and account for the expenses required therefor. Justice also warns that local governments should be given a free hand in the disposal of their finances for furthering their own interest. This scheme will prove most successful and will be efficiently managed because the local bodies will try to economise at the same time securing greatest profitable results possible.

In the absence of local self-government the common citizens awake from their political drowsiness once in five or seven

Develops responsibility and arouses interests in the citizens

years at the time of elections and as soon as the elections are over they lose all their interests in their own Governmental institutions and become indolent and apathetic. Local Government by constantly arousing public interest and by working on Democratic lines does away with this attitude of citizens and inspires in them the idea of self-rule. "The best school for democracy and the best guarantee for its success is the practice of local self-government." They develop common sense, reasonableness, judgment and sociability.

The central government is already overburdened with heavy duties. The prevalence of local issues distracts its atten-

National interest does not suffer

tion from the national issues which are too many and full of complexities, which may result in inefficient and weak management and governance. Local Government by relieving the Central Government of its burdens, can allow it to concentrate its undivided attention with vigour and energy for the better solution of national questions.

Local Governments, therefore, are necessary and natural. They pay due regard to the ability of people to govern their respective affairs ably, at the same time they imply a process of devolution in administrative functions by a grant of autonomy to local units. By its educative value it develops questioning attitude among the masses who are prone to regard orders and everything from above as a matter of course.

Granting the advisability of developing local initiative and enterprise, it does not mean that local bodies should be

Cautions and Precautions

allowed to have unrestricted and unlimited freedom. Whatever autonomy they enjoy, there must be central supervision and control to foster the feelings of co-operation. The local bodies are creations of central government and are enjoying delegated powers. However, the central government should refrain from exercising these powers except when the affairs of the local bodies are mismanaged, ill-conducted and extravagantly pursued. The central government without curtailing the powers or destroying the dependence of local bodies can train and stimulate them out of its own experience and make them efficient and public spirited.

II

1. India is known for the institution of Local Government from very ancient times but "Local Self-Government in India in the sense of electorate enjoying wide powers of administration and taxation and functioning both as a school of training in responsibility and a vital link in the chain of organisms that make up the Government of the country is a British creation. The ancient village communities were constituted on a narrow basis of hereditary privilege of caste, closely restricted in the scope of their duties—collection of revenues and protection of life and property—were their main functions and were neither conscious instruments of political education nor important parts of the administrative system."

2. The first local body thus created was in the year 1687 when the East India company was authorised by charter to establish a corporation and a mayor's court in Madras. The Corporation used to consist of a mayor alderman and burgesses, both Europeans and Indians and was authorised to collect taxes from the inhabitants. The Charter Act of 1793 empowered the Governor-General to appoint justices of the peace for the Presidency towns who were to provide for the scavenging, watching and repairing of the streets. The act also empowered them to levy and collect taxes on houses and lands to meet the municipal expenditure.

But it was in the middle of the 19th century that the real principle of Local Self-Government was recognised, *viz.* the elective principle and the tax payers were given the right of choosing representatives to the corporation. A series of enactments between 1840 and 1861 provided for the setting up of Municipal institutions in other towns and with the passage of the Council's Act the system of Municipal administration was recognised by the Local legislature.

3. A step forward was taken by Lord Mayo's resolution on Provincial finance which emphasised the importance of Local Self-Government and said, "Local interest, supervision and care are necessary to success in the management of funds devoted to education, sanitation, medical, charity and public works. The operation of this resolution in its full meaning and integrity will afford opportunities for the development of Local Self-Government for strengthening municipal institutions."

The resolution also encouraged the application of election principle with the object of developing Local Self-Government with the result that new Municipal Acts were passed in various Provinces which increased the sphere of municipal usefulness and introduced the system of election. The acts affected urban areas but no progress was visible in rural areas.

4. It was Lord Ripon's resolution in 1882 which gave a strong impetus to the progress of Local Self-Government. He looks upon the development of Local Self-Government as a means of political and popular education. His resolution advocated the establishment of a network of Local Self-Governing institutions, with special emphasis on the necessity for

meeting the requirements of the hitherto neglected rural areas, the restriction of the official element in Local bodies to not more than a third of the whole, the exercise of control from without and not from within, a larger measure of financial decentralization and the adoption of election as a means of constituting local bodies wherever possible.....in order to foster sedulously the small beginnings of the independent political life, to utilise the rapidly growing intelligent class of public spirited men, to develop or create a capacity for self-help.

As a result, series of Provincial Acts were passed which introduced a scheme of Local Self-Government, increasing at the same time, sphere of municipal administration and allowing the institutions to elect their Chairman or Vice-Chairman. Arrangements were made to increase municipal resources and financial responsibilities.

The suggestion that Local Self-Government should develop in the hitherto neglected areas had its good effects, as in Madras, Union Board was established in village, as the primary self-governing body, with Taluqa and District Boards above it. Although no uniformity could be observed in the creation of these institutions in various Provinces, the rural self-government was a uniform feature in all the Provinces. However the custom of the country, force of habits, apathy and lack of desire to assume responsibilities among those elected combined to prevent real and substantial progress being made in popular and political education in the art of self-government.

The Mont-Ford Report laid down considerable stress upon the invaluable training afforded to the citizens by the exercise of Local Self-Government. "Responsible Government calls for an intelligent electorate which can come into existence only after a sound training of the people in the principle of citizenship. Training in citizenship could result only from participation in Local Self-Government. "Reviewing the position it said that the hopes entertained of these bodies have not in the past been fulfilled. The avowed policy of directing the growth of Local Self-Government from without rather than from within has on the whole been sacrificed to the need for results ; and with the best intentions the presence of an official element on

the Boards has been prolonged beyond the point at which it would merely have afforded very necessary help up to a point at which it has impeded the growth of initiative and responsibility.

Naturally the Report emphasised that every effort should be made in local bodies to extend the franchise, to arouse interest in elections and to develop local committees so that education in citizenship may as far as possible be extended and everywhere begun in a practical manner. With this view in mind and with a view to give effect to this principle the report laid down that there should be as far as possible complete popular control in local bodies and the largest possible independence for them of outside control.

The Government of India in pursuance of the proposals passed a Resolution in 1918 to the effect that responsible institutions will not be stably rooted until they are broad based and that the best school of political education is the intelligent exercise of the vote and the efficient use of administrative power in the field of Local Self-Government and suggested elected majorities in all boards, the election of a non-official chairman by elected majorities in the municipalities and the representation of minorities by nomination.

Under the Government of India Act 1919, Local Self-Government is a transferred subject and has been placed therefore under ministerial control. The Provincial councils have made use of the power bestowed upon them and have passed many local acts relating to the composition, and powers of the Local bodies thus apply more extensively the principle of Local Self-Government. The enactments have resulted in extending the franchise, the increase of the elected element in them and vesting the entire administration of Local affairs to the local bodies removing the influence of Local affairs.

The Government of India Act 1935, in granting full provincial autonomy has introduced effects of far reaching character though similar nature, in the organisation, structure and function of the local bodies. In several Provinces the nominated element has been completely abolished so as to make the Local bodies truly representative of public opinion and to bring them under popular control. It is not therefore the local Government but Local Self-Government in the

real sense of the term that has been the achievement of the Act of 1935.

III

1. It is not possible to say whether in India the Local Self-Government on the whole has been a success or failure from the meritorious achievement and fruitful results of many and utter failure to manage their own affairs in case of others. "In none of the various sections of the field surveyed have we to paint a picture of unrelieved failure or unqualified success. In every province while a few local bodies have discharged their responsibilities with undoubted success and others have been equally conspicuous failures, the bulk lie between these extremes."

2. The first essential of efficient Local administration is intelligent citizenship and much depends upon the strength, knowledge and vigour of people themselves. These conditions of success do not exist here. The wide transfer of power implied in the charter of Local Self-Government was not fully appreciated by a conscious, responsible, free and unprejudiced public opinion. No doubt the main curse is of illiteracy. But if people understand the principles of Local Self-Government there is no reason for them to be indifferent and indolent in their very primary duties, as payment of taxes, on the ground that they are uneducated. The caste-ridden mentality and orthodoxy of the people do not allow them to be public-spirited and that persons are not valued upon their merits but upon their wealth and social and personal prestige.

3. The second essential for the success of Local Self-Government is a simple political framework. A good Local Government means conferment of ample powers to the Local bodies, along with the freedom to exercise those powers without undue check and restrictions. In India, the progress of the movement was impeded by excessive official control. However with the increasing demand for Local Self-Government this official control is being gradually relaxed and the Government has retained the control only through nomination and right of suspension in case of gross mismanagement.

4. The third essential of a successful Local administration depends upon proper allocation and distribution of resources

funds. In case of India not only there is a paucity of funds but the distribution of the resources follows defective lines and unsound principles. For instance in many cases, it is the cost of establishment that swallows the major portion of the funds and nothing is left for nation-building purposes. The sources in India are also inelastic and cannot keep pace with the growing demands of ever-increasing population. Moreover people have a tendency to evade the prevailing taxation and also they are averse to new taxes being levied upon them. It is finance that lubricates the wheel of administration and in the absence of adequate finance, the ideal of "city the beautiful" with ever conscious and vigorous citizens has very rare chance of fruition.

5. The fourth essential is a proper internal administrative organisation. The administrative machinery must be flexible enough to meet changed conditions and new problems constantly. At the same time it must be firm enough to ensure a reasonable measure of stability. In India the difficulties are twofold. There is no proper division of functions and so much needed co-ordination. Efficiency is always lacking due to the dishonesty of the members of the local executive and also because there is too much of interference on their part in the working of the officers, as the members want to inflate their private gains by misappropriation and corrupt practices. Naturally the officers are chosen not on the ground of efficiency and merit, but selected because the persons concerned have some influence in official circles. Moreover such appointments are often made on communal grounds. It is not that efficient men are scarce but efficiency is hidden due to uncertainty of tenure, excessively low salaries, irregular payments and at times ill-treatment.

6. The last essential upon which the success of Local Self-Government depends is creation of a simple and autonomous administration for local affairs. There should be as far as possible popular franchise, absence of official element, ultimate responsibility of the Local Self-administration to the people and no demand on the part of the people for separate electorates and their eventual grant by the authorities. In India we have our local bodies for a long time being dominated by officials, the elections still do not take place on as wide a

franchise as possible and even with a loud cry for Democracy the separate and communal electorates are maintained sometimes coupled with reservation of seats.

IV

1. If the experiment of Local Self-Government has to become a success these glaring defects must be removed. It is absolutely necessary that the financial position of these Local bodies must be made more stable by more grants-in-aid and finding for them additional sources of income. At the same time the evasive mentality of the people in regard to payment of taxation must be rectified by making the rate payers feel that it is for them that these money is being utilized and the more and regularly they pay the happier and brighter are their prospects.

2. By adopting the principle of free, compulsory and universal education people could be made more conscious and responsibility should be brought home to them. No sooner people realise the tremendous importance of the change implied in the transfer of power, the success of Local Self-Government is guaranteed. The corruption, nepotism, red-tapism will be automatically done away with, by stimulating the civic consciousness of the people and immediate reforms in these directions alone will help much in the achievement of the real objective.

3. The Local bodies carry on multifarious functions, on the intelligent and efficient discharge of which largely depends the welfare and well being of the people in that particular locality. To the Local bodies are sometimes delegated certain functions for the sake of convenience and any sort of neglect on their part in the administration of those functions would prove harmful. Similarly in certain other cases where the matters are of purely local concern, any negligent attitude is dangerous to the locality in question. Hence arises the necessity of the control by the Government over local bodies. They should not be allowed to evade duties bestowed upon them and supervision and regulation in case of their own affairs is also deemed necessary on account of the ignorance or carelessness on the part of the local bodies. "To see the proper discharge of certain primary and essential functions, to prevent the un-

due extension of statutory functions, to protect the interests of the individuals against encroachment by the local bodies, all these become occasions for state control."

4. This control though justified should not be carried beyond certain limits as it would result in destroying the autonomy and impair whatever efficiency the local bodies possess. In India this control is exercised in various ways. The Government decides the actual number of seats in local bodies and provides for the reservation of seats for the minorities. It also nominates certain members to the local bodies. The Provincial laws allow the right of supervision and inspection over local bodies to the commissioners and District Magistrates who can call for any statement or information and can make the local bodies consider certain matters as urgent. The proceedings of the local bodies can be cancelled and any resolution can be prevented from being passed if it is beyond the competence of local bodies or if it is harmful to the peace of the locality concerned.

In case of a gross mismanagement the Government may suspend or supersede a municipality and take over the entire administration. The revenue commissioner is empowered to control the expenditure of local bodies and can suggest any cut or reduction in the proposed expenditure if in his opinion it is not necessary. The Government can also remove or suspend for inquiry any presiding officer or administrative officers, if he is suspected of misconduct and on the charge of incapacity or negligence. The Government can also influence the organisation and functionaries of the Local bodies by its powers of conceding grants to local bodies which may be revised or reduced. Moreover if a local body wants to raise a loan, the sanction of the Government is absolutely necessary and thus Government is in a position to regulate the finances of the local bodies. With the passage of the Government of India Act 1919, local self-government has become a transferred subject and is under the supervision of Minister responsible to the legislature.

5. It seems as if there is excessive and to some extent even unjustifiable control of Government over the local bodies. In other countries such a control is there, but it is justified in

the interest of better services and greater welfare which eventually result. There the Government is really the Government for the people themselves. People will not tolerate excessive interference and the Government will refrain from exercising undue control over local bodies and in case the Government interferes, it is taken to mean for the wider interest of the community and for the greatest good of the greatest number. In India this question raises various issues. The Government being alien, it wishes to commune even to the local field that mentality of vigorous control but at the same time being least interested in the well-being of the people of those localities concerned, it is very reluctant to interfere unless the mismanagement has reached to such an extent, that it becomes unwise on the part of Government to remain a third party and not to interfere. Naturally whenever the Government intervenes, the actions of the Government are drastic and radical and such control is never healthy and conducive for the advancement of the local cause. Simon Commission considered it a grave error on the part of Provincial Government as not to realise the need for control over Local Self-Government authorities and remarked where spur and rein were needed, the ministers were given only a pole-axe. To conclude therefore it is obvious that the Central Government must retain a power generally to control the work of local authorities and cannot abandon the general duty of investigation ; but such a control must always be exercised with certain reservations always allowing the local bodies to develop out of their own resources but at the time keeping them conscious and alive to the fact that there is a watchful and ever intelligent eye of the centre to mark out their deficiencies.

The Local Self-Governing institutions in India may broadly be classified into Rural and Urban. These two classes of institutions are absolutely necessary as rural life in India essentially differs from urban life. On the rural side there are village Panchayats or the Union Boards having jurisdiction over a village or a group of several villages combined together. Then there are taluq or sub-district boards with their authority extending over a sub-division and lastly the District Local Boards having jurisdiction over the district. So far as the administration of Urban areas is concerned there are

corporations for the Presidency towns and Municipalities for other towns and cities. There are cantonment Boards where troops are stationed. In the Presidency towns, moreover there are Improvement Trust and Port Trust.

V

Organisation of Rural Local-Self-Government

Panchayats can be described as the foundation stones of the Pyramidal structure, with corporations at the apex. The Panchayats are purely Indian in origin and before the advent of the British rule, in their good old days they were rigorous and active, and having full jurisdiction over the village ever vigilant to guard the interests and safeguard the rights of the people. Under the British rule, the development of transport and communication, establishment of courts in sub-divisional and district towns, gradually lead to the decline of the old village Panchayat system. Today, however, there is a growing tendency and increasing move for the revival of the Panchayat in a manner to suit the changing circumstances with the advance of times. Naturally the village panchayats as we see them today are the results of the reform movements which were initiated when the Local Self-Government became a transferred subject with passing of the Government of India Act 1919.

In Bombay the present organisation is based on the Village Panchayat Act 1933 and subsequent amending Act of 1939 by which the Provincial Government is empowered to institute a Panchayat in a village having a population of 2000 or over. The Panchayat will now consist of members who are all elected, with the old system of partial nomination and partial election abolished. The number of members will vary from 7 to 11 as the Collector may decide. Seats are reserved for Muslims, Harijans and for women. Adult franchise is the accepted practice as all male adults residing or holding land or building in the village will have a right to vote. The Panchayats have a life of three years. The presiding officers are the President and vice-president; they are elected by the members of the Panchayat for the term of Panchayat. Each panchayat will have a Secretary, removable by Government but 2/3rd majority of the members of the Panchayat

can ask for his removal. The Panchayat also enjoys some amount of judicial power as the Provincial Government may assign.

Union Boards.

The Union Boards carry on the administration of a village or a group of villages. The members of Union Board vary from six to nine out of which two-thirds are elected and one-third are nominated by the Government for a term of four years.

The President is elected by the members of the Board and automatically becomes the Executive head. The Union Board works under the supervision of the circle officers, who are appointed by the Government. The franchise is not adult but only adult residents above 21 years of age paying union rates or cess worth six and eight annas respectively or having educational qualifications have the right to vote.

District Boards.

The District Boards are constituted for the management of the affairs of the District. The Board consists of members most of whom are elected, with a very few nominations in case of certain Provinces, with the introduction of Provincial autonomy. There are separate electorates for the Muhammadan community, with reservation of seats for Muhammadans, women, scheduled castes and backward areas.

The number of members is not to be less than nine but actually it varies from 18 to 33. The members are to be generally elected by the members of local Boards but in case there are no local Boards they are to be elected by voters of the village under the union Boards. The members generally hold office for a term of four years. Formerly the District Magistrate used to be the *ex-officio* President of the District Boards, but this practice has now been discarded to the effect that the Chairman and the Vice-Chairman of the Board are now elected by the members. The Boards appoint a Secretary, an Engineer and other officers for conducting the affairs of District Boards.

VI

*Organisation of Urban Local Self-Government***Corporation.**

The Presidency Municipalities are generally known as corporations and are constituted by special acts. The number of councillors varies from 117 in Bombay to 61 in Madras and the Calcutta Corporation consists of 98 councillors, who are usually elected. The basis of franchise also varies from city to city.

The Bombay Municipality is composed of three statutory bodies—the Corporation, the Municipal Commissioner and the Standing Committee.

The Bombay Corporation consists of 117 members. Out of this number 114 are elected—106 being returned by the general voters from different wards and 8 being elected by special constituencies *viz.* four are delegates of labour and 4 are representatives of the Bombay Chambers of Commerce, the Indian Merchants Chamber, the Bombay Mill-owners Association and the Fellows of the University of Bombay and the remaining three being *ex-officio* members—the Police Commissioner of Bombay, the Chairman of Bombay Port Trust and the Executive Engineer, Presidency Division.

There is no reservation of seats for any community, the election being on the basis of joint electorate. Formerly the right to vote extended to all residents who pay a monthly rent of five rupees but now adult suffrage prevails. The corporation has a life of four years. It elects its own Mayor but by a convention, the office of the Mayor goes to the member of different communities by rotation.

The Chief Executive Officer of the Bombay Corporation, the Commissioner, is not appointed or elected by the Corporation but he is appointed by the Government from the I. C. S. for a period of three years, as it is deemed necessary that the officer of such a corporation with extensive areas under its jurisdiction and with diverse and wide interests under its control should have an officer from bureaucracy, not amenable to influence by the members of corporation. However, in order to provide a check and to exact from the Commissioner due

obedience, if the 64 coucillors desire to remove the commissioner from office, he may be removed. He is assisted by two deputy Commissioners, appointed by the Corporation with the sanction of the Government. The Corporation also appoints the Municipal Secretary, the city Engineer and the Health Officer. The Chief Commissioner is entrusted with the duty of superintendence and control over the entire staff under the corporation ; he also makes appointments to posts carrying a maximum salary of Rs. 500 per month or less ; he also prepares the Annual Budget of the Municipality.

The Standing Committee of the Bombay Municipality consists of sixteen members all of whom are elected by the Corporation. As soon as the elections are over, a fresh committee, is constituted of elected members, with half of the members retiring every year and their places being taken by new members who are elected by the Corporation.

The Chairman of the Standing Committee is elected every year and as in the case of the Mayor, by convention the office rotates among the members of various communities.

The Committee scrutinizes the budget prepared by the Municipal Commissioner before it is presented to the Corporation. The Committee can introduce any change it desires in the budget and then present the modified budget to the Corporation. "It sanctions contracts, establishment schedules and investments, it examines weekly accounts and frames general service regulations for the municipal staff. It is thus an important link between the Municipal Commissioner and the Corporation.

It will thus be seen that the Corporation is an autonomous body within a large sphere, enjoying complete freedom in the management of its affairs. However, this autonomy does not mean complete independence because the jurisdiction is subject to certain powers of control in relation to appointments, contracts, the raising of loans which are vested in the Government of Bombay.

Municipality.

There are about 780 municipalities in British India and are entrusted with the duty of maintaining the local affairs. Usually they consist of a majority of elected members. The

election rules are framed by the Government and educational and rate-paying qualifications are the basis of franchise. The system of nomination is not altogether abolished but retained in some cases in order to provide for official control. In Bombay all the members are elected. Even though communal electorates have been conceded to Muhammadans, they have been given an option to have joint electorate if majority of them desires so.

Each Municipality must appoint a Chief Executive Officer. The other officers like Secretary, Engineer, Health Officer, Sanitary Inspectors may also be appointed.

The Government still retains a control to a considerable extent over municipalities and in case of mismanagement, abuse, neglect of duty and misappropriation the Government may suspend the Municipality.

Improvement Trust

In many cities Improvement Trusts have been established to make the aim of "city beautiful" practicable by effecting improvements in health, sanitation and cities. Cities are usually over-crowded with the result that areas grow up damaging the health of cities by breeding epidemics and infectious diseases.

The duty of Improvement Trust is to clear such areas and make room for fresh air, space and light.

Port Trusts.

The affairs of the major ports of India are administered by a body of Commissioners known as Port Commissioners. They consist of members, some of whom are elected by commercial and municipal bodies and some are nominated by the Government. The Chairman is an official.

The Port Trusts construct and maintain harbours and docks. They run ferry steamer services and pilot the incoming and out-going steamers and ships. They also carry on dredging operations. The responsibility of managing the revenue and expenditure of the ports naturally falls upon them. They derive their income by levying dues and fees upon the functions they perform.

The importance of Port Trust is therefore great because the management of the ports and efficient import and export trade of the country would suffer much in their absence.

VII

Functions of the Local Bodies in Rural Areas and Their Sources of Income

The functions of the local bodies are numerous. In the case of Union Boards they cover almost every aspect of civilised life and existence. They are to maintain village peace for which they are to appoint chowkidars. The cost is charged upon their income. They are also to look after primary education by either maintaining free schools or help them by grants. Constructions of village roads and bridges are also their important functions.

The duty of providing water to the village and medical relief through dispensaries also rests upon them. Sanitation, conservancy, drainage, registration of births and deaths, arrangements for fairs, prevention and cure of epidemics and cattle diseases are also the functions of the Union Boards.

As compared to the exhaustive and wide functions the income derived from (1) Union Rates or Chowkidari tax which is imposed upon all occupiers or owners of land and building in rural areas, (2) grants from the Government and District and District Boards, (3) miscellaneous receipts and fees and fines like license fees, fines on the criminals while discharging the judicial duties etc. is very small and scanty.

The amount thus derived is spent on the functions noted above. However the allocation is not quite satisfactory as half the amount is spent on the maintenance of the chowkidars and Dafdars.

(a) The District Boards perform similar functions. They maintain local communication by constructing and preserving roads and bridges, (b) provide for sanitation by constructing hospitals and dispensaries, (c) build markets, bungalows and other public buildings, (d) provide suitable and adequate water supply, (e) maintain public health by opening campaigns of public health and hygiene, (f) provide for greater spread of education by establishing, maintaining and helping primary and secondary schools, (g) take up the task of famine relief

by opening relief centres during famine, (h) and in some important districts the Boards provide for the construction of light railways.

The Boards levy cesses on roads and land. They also levy the Toll tax and derive some income from miscellaneous receipts—fees and fines. The Government helps the Boards with grants in aid and they could also raise loans subject to the sanction of the Government.

The District Boards spend their income on the different functions noted above and the office establishment.

VIII

Functions of the local bodies in urban areas.

The municipalities and corporations have to perform numerous functions. They are expected to provide all amenities of town life.

(1) Construction and upkeep of the roads and streets, their cleaning and watering, naming and lighting.

(2) The construction and maintenance of squares, parks, gardens and playgrounds.

(3) Preservation of public health with the help of vaccination, sanitation, medical relief, construction of hospitals and dispensaries and prevention of epidemic diseases.

(4) Provision of suitable arrangement for conservancy and drainage, pure water through wells, tanks and water works and electricity.

(5) Maintenance of markets, slaughter houses and registration of births and deaths.

(6) Regulation of weights and measures and the control of the sale of food and drugs.

(7) Provision of education, both primary and secondary, maintenance of libraries and museums.

The sources of income are varied and different ;

(1) Tax on the annual value of holdings.

(2) Water rate, lighting rate and conservancy rates.

(3) Tax on vehicles and animals, tax on trade, professions and amusements, tolls on ferries and bridges, tax on private markets.

(4) Octroi duties, imposed on goods or animals imported into or exported from Municipal areas.

(5) Income from Municipal properties and enterprises.

(6) Grants from Government for specific purposes.

(7) Loans in necessary cases subject to the sanction of Government.

The income thus* derived is spent on various items of functions but the fault with the Municipal administration is that much of the income is spent upon the establishment and allocation to such important items like public health and education is deplorably negligible. What is necessary is the thorough reshuffling of the entire system of expenditure.



MODEL QUESTIONS

CHAPTER I

1. What is Civics ? Define it and discuss its scope.
2. What is the subject matter of Civics ? Is Civics a science or an art ?
3. Discuss the relation of Civics to ethics, economics, politics and history.
4. What is the importance of the study of civics for a free nation ?

CHAPTER II

1. Discuss fully the remark "Man is a social animal."
2. What is the significance of society for the individual ?
3. What part do customs, law and morality play in the regulation of social life ?
4. Discuss in detail the foundations of social life.
5. Explain how the study of Civics teaches us the right ordering of our loyalties.
6. Distinguish fully between castes, classes and estates.
7. Discuss the possibility of establishing a classless society.
8. Describe the evils of the caste system in India. Should it be abolished ?

CHAPTER III

1. Discuss the nature and functions of social institutions.
2. Discuss the meaning of the right to private property.
3. Trace the evolution of the institution of private property.
4. Evaluate the part played by private property in the modern state.
5. "To some private property is a sacred trust, to others it is a theft" Discuss.
6. Explain fully private property as a functional right.
7. Give your arguments in favour of the abolition of private property.
8. Discuss family as a nursery of civic virtues.
9. Bring out the importance of family as a functioning unit in the past, present and future.
10. What changes has the family undergone in modern times ? What are its causes ?
11. Discuss fully the defects of modern marriages and the problem divorce.

12. Discuss the future of joint family system in India.
13. Give the justification of the control the state exercises over the institution of family.

CHAPTER IV.

1. Define State. What are its essential elements?
2. Discuss briefly the various theories of the origin of the State.
3. Distinguish fully between society, state, government and nation.
4. What are the essential functions of the state?
5. Discuss fully the concept of sovereignty.
6. What distinct place does the state occupy in society ? Is it just one among the many other institutions in society ?
7. Distinguish between a 'power state' and a 'welfare state'.

CHAPTER V

1. Classify the different forms of government. How is presidential form of government different from Parliamentary form of government ?
2. Discuss the relative merits of the unitary and federal forms of government.
3. What are the chief characteristics of a federation ?
4. Discuss briefly the merits of dictatorship. Can it survive in the modern world ?

CHAPTER VI

1. What are the essential characteristics of democracy ?
2. How far can we call democracy the best form of government ?
3. Show how democracy is a government by discussion.
4. What is the place of the electorate in the modern State ?
5. Discuss fully the concept of a 'universal franchise'.
6. What are the relative merits of direct and indirect elections ?
7. Explain the role played by a vigilant public opinion in the efficient working of democracy.
8. What is the importance of a political party in a democracy ? Can we say that democracy is a government by majority rule ?
9. Discuss in general the conditions essential for the success of democracy.

CHAPTER VII

1. Discuss the theory of separation of power.
2. To what extent is a complete separation of powers desirable or possible?
3. Describe the main functions of a legislature.
4. Evaluate the position of second chambers in modern democracies.
5. Discuss the case for the complete separation of judiciary from the executive.
6. What do you understand by a constitution? Compare the relative merits of a written and unwritten constitution.

CHAPTER VIII

1. What are fundamental rights?
2. Distinguish fully between civil and political rights.
3. Show how rights are related with a man's freedom.
4. Discuss the importance of the right to work and freedom of speech.
5. Write a note on the right to rebel.
6. Write a detailed note on the provision of fundamental rights in the new constitution of India.

CHAPTER IX

1. What is citizenship? What are the hindrances to good citizenship?
2. Distinguish between a citizen and a resident alien.
3. What are the chief duties of a citizen?
4. "Rights attain fruition only when they ripen into duties". Discuss.

CHAPTER X

1. What is the value of local self-government in a democracy?
 2. Discuss how modern municipalities and corporations in India function as autonomous units.
 3. What are the main features of local bodies in India? How far can they be called centres of democracy?
 4. Explain in detail how local self-government serves as a training ground for a democratic government.
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